

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
vs.) Criminal Action
)
HERZZON SANDOVAL,) No. 15-10338-FDS
EDWIN GUZMAN,)
CESAR MARTINEZ,)
ERICK ARGUETA LARIOS,)
Defendants)

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

JURY TRIAL DAY 15

John Joseph Moakley United States Courthouse
Courtroom No. 2
1 Courthouse Way
Boston, MA 02210

February 20, 2018
8:22 a.m.

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Official Court Reporter
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1 APPEARANCES:

2 For The United States:

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7 For the Defendant Herzzon Sandoval:

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14 For the Defendant Erick Arueta Larios:

15 THOMAS J. IOVIENO, ESQ., 345 Neponset Street
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17 For the Defendant Cesar Martinez:

18 Stanley W. Norkunas, 11 Kearney Square,
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20 ROBERT M. SALTZMAN, ESQ., 1 Central Street, Suite 5,
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22 ALSO PRESENT: Gabriel Haddad, Spanish Interpreter
23 Carrie Lilley, Spanish Interpreter
24
25

I N D E XWITNESSDIRECTCROSSREDIRECTRECROSS

EVELYN TORRES

By Mr. Lopez

38

By Ms. Lawrence

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STEPHANIE AMADOR

By Mr. Lopez

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By Mr. Pohl

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EXHIBITSFOR I.D.IN EVIDENCE

31.1

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236 through 240

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08:22AM 10

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1 the complaint is not start with Juror Number 2, start with
2 Juror Number 5. I don't know what questions we're going to ask
3 Juror Number 2 unless we have a better understanding of exactly
4 what Juror Number 5's complaint is, and so I understand that
5 there's, you know, a difficulty if we pull Juror Number 5 out,
6 send Juror Number 5 back and then pull Juror Number 2 out, I
7 think it's going to be pretty apparent to Juror Number 2 sort
8 of when we do ask him questions where the source of the
9 complaint is.

08:24AM 10 THE COURT: All right. Which may do more harm than
11 good. In other words, what Juror Number 5 complained of was
12 that he was attempting to discuss the case, not that he did.

13 MR. POHL: Right. I mean, that was my inclination was
14 to start with 5, and depending on what 5 says, I guess, I guess
15 it's an open question of whether you really need to talk to 2.
16 That was my --

17 THE COURT: Let's assume 5 just repeats what was in
18 the note, you know, that raised the question do I need to talk
19 to 2? Does anyone from the defense want to weigh in?

08:25AM 20 Mr. Norknuas.

21 MR. NORKUNAS: Judge, I would confer with your
22 recommendation. I think the human dynamics, we bring out 5, we
23 bring out 2, we've got some sort of antagonism, assuming they
24 both stayed. If we bring out 2, he's going to have no idea
25 where it came from.

1 THE COURT: He may have an idea.

2 MR. NORKUNAS: Right. I think that's the best way
3 because no matter what 5 would say, if 2 denies it, where are
4 you? So I think that's the best way to do it, and I would ask
5 the Court to take that position.

6 THE COURT: Anyone else? All right. I guess I'm
7 going to stick with my game plan. There's no obvious way to
8 handle this, and I guess I'm going to start with Juror
9 Number 2, and if he denies it, we'll take it from there. I'll
08:26AM 10 tell you that my inclination at that point would be to remind
11 everyone one more time of their obligations and leave it there.

12 This is a human process, and, of course, perfection is
13 too much to expect, but I also haven't heard any reports that
14 jurors are actually discussing the case before the evidence is
15 completed, so let's try that, and I think I want to do that
16 without the jury sitting there, so we'll have Lisa bring him in
17 as soon as he's available and do it at sidebar.

18 All right. Turning to the evidence, there was a
19 motion I think from Mr. Lopez over the weekend concerning some
08:27AM 20 additional -- it's a motion to admit transcripts. Well, let me
21 ask the government's position. I don't have a problem with the
22 transcripts themselves, the question is foundation.

23 Ms. Lawrence.

24 MS. LAWRENCE: Yes, your Honor, we do object to the
25 admission of the transcripts at this time. There are a couple

1 of problems, as we see it. 1 is that the transcript which is
2 Exhibit B -- wait, A, I think is the longer one of the
3 January 8, 2016 jump-in of Animal.

4 THE COURT: Yes.

5 MS. LAWRENCE: The defense has offered an alternate
6 version essentially of the transcript with different speakers
7 designated, which fully complies with the Court's instructions
8 and direction that we could, in fact, do that, however, this
9 comes far too late, according to the Court's orders.

08:27AM 10 The government produced this transcript for the first
11 time in early December, produced two or three subsequent
12 revisions before trial. Defense counsel for Mr. Argueta Larios
13 produced an alternate version on time on June 22nd. The point
14 is it's just far too late at this point.

15 The other concern we have with this is that I
16 understand from speaking with Mr. Lopez and even what he's
17 filed with the Court is that he says that he only came to
18 understand these alleged misidentifications during the trial
19 testimony of Trooper Estevez when we read the transcript into
08:28AM 20 evidence, and he says that he gave the recording to a
21 translator, not the same translator he put on the witness list
22 but a different translator who then confirmed the
23 misidentifications.

24 That's a suspect -- we're suspicious of the basis for
25 the identifications, given Mr. Lopez' representation that she

1 confirmed them as opposed to listening to the recording on her
2 own without being told who the speakers were, but, in any
3 event, if the Court is inclined to admit this alternate
4 transcript, we would definitely ask that it be admitted clean
5 without the cross-outs indicating their changes to the jury.
6 It could just be an alternate transcript from which he could
7 argue, as opposed to telling the jury somehow by crossing it
8 out that the government's version is wrong.

9 THE COURT: Mr. Lopez.

08:29AM 10 MR. LOPEZ: Thank you, your Honor. Your Honor, so
11 this particular transcript went through numerous iterations,
12 and it wasn't until shortly before the trial began that we
13 received a final, final transcript from the government, but
14 with respect to the timeliness, these changes were brought to
15 my attention during the trial by Mr. Guzman himself.

16 As you might recall that Muerto was the one who did
17 the identification of these speakers for the government, it
18 wasn't Ms. Huacuja, but it was Muerto, the government's
19 cooperating witness.

08:30AM 20 I wanted to verify that, and so I asked the woman who
21 worked for me last summer who listened to hundreds of hours of
22 tapes in this matter and became intimately familiar with the
23 voices of the individuals on these tapes, and I had her listen
24 to the tape on Sunday, and she confirmed, and she's here
25 prepared to testify, she confirmed that there were errors in

1 this transcript.

2 I made those changes, and I immediately sent them to
3 the government Sunday evening. We discussed it yesterday, and
4 here we are. It seems to me, your Honor, that given the fact
5 that the government is relying upon a cooperating witness, the
6 defense should have an opportunity to at least show the jury
7 that there are discrepancies as to who the speakers are.

8 As you may recall, early, early on this case, your
9 Honor, there was an allegation that Mr. Guzman was the one in
08:31AM 10 this particular recording that welcomed the Animal to the Mara.
11 That has been subsequently changed by the government to say no,
12 that wasn't Mr. Guzman, that was Caballo. This transcript says
13 no, that wasn't Caballo, it was Duke.

14 THE COURT: Caballo, Mr. Lopez, please, I beg you, not
15 Caballo.

16 MR. LOPEZ: Caballo. So, your Honor, I think that the
17 jury should be given this. If the Court needs a foundation
18 from Ms. Amador, who was not on my witness list because I
19 didn't anticipate this particular issue, then she's here.
08:32AM 20 She's also here prepared to testify that she listened to the
21 other transcript that I'm seeking to admit and which is
22 contrary to what Muerto testified to under oath.

23 THE COURT: All right. It seems to me that there are
24 four different issues here. One of them is the timing of it,
25 one is the accuracy of the translation, one is identification

1 of voices, and one is the form of it, which is crossing out of
2 names.

3 The timeliness of it is not optimal, but I think under
4 the circumstances, I'm prepared to overlook it. That leads to
5 the two foundation questions, which is is this something that
6 someone who is familiar with the voices can testify as to, and
7 I think, well, it's perhaps marginal. I think under the
8 circumstances I'm going to permit it, that is, I think
9 Ms. Amador, if that's her name, will have to testify and say
08:33AM 10 that she listened to hundreds of hours, and in her opinion,
11 these are the people who are, in fact, speaking or, you know,
12 in the case it's unidentifiable, and she can give that
13 testimony.

14 Obviously, she can be subject to cross-examination
15 that she wasn't there, and, you know, her familiarity is
16 limited to the recordings, but I think I'll allow that.
17 Presumably she can also testify as to the translation issues,
18 which I think is only in the second piece of this, right,
19 there's -- is there a dispute about translation? It's not
08:34AM 20 clear to me.

21 MR. LOPEZ: I don't believe there's a dispute, but I
22 haven't verified that with the government.

23 THE COURT: All right. Then in terms of crossing out
24 of names, I think having permitted the government to use this
25 and let it go to the jury, I think the next logical step would

1 save everyone the time and trouble and permit them to get the
2 crossed out version, so assuming Ms. Amador testifies,
3 indicates that she's listened to hundreds of hours of tapes,
4 she's familiar with the names, is a native Spanish speaker,
5 I'll permit it.

6 I don't know if the government wants to respond in any
7 way or whether that involves recalling a witness.
8 Ms. Lawrence, what's the government's view?

9 MS. LAWRENCE: No, your Honor, I don't need to respond
08:35AM 10 to that. I would just raise one issue on the recording. It's
11 our outstanding from Ms. Amador was a summer associate at his
12 law firm last year in the summer of 2017. I don't know whether
13 that implicates any attorney-client privilege issues with her
14 testifying about listening to the recordings or conversations
15 she had with Mr. Guzman, and I just want to alert everyone to
16 that and make sure it's on the record.

17 THE COURT: If she testifies, for example, about
18 conversations with Mr. Guzman or Mr. Lopez about these issues,
19 that privilege will have been waived by her testimony, subject
08:35AM 20 matter privilege, meaning, you know, anything having to do with
21 that is opened up.

22 MS. LAWRENCE: May I address the December 8, 2015
23 recording?

24 THE COURT: Yes.

25 MS. LAWRENCE: Not on the issue of the transcript

1 itself but simply the content and timing and presentation of
2 this?

3 THE COURT: Yes, okay.

4 MS. LAWRENCE: As you know, Muerto was on the stand
5 for a couple of days, and Mr. Lopez had him on
6 cross-examination for nearly three hours and had the
7 opportunity to confront him with this alleged prior
8 inconsistent statement. He did ask him some questions about
9 the alleged incident, and Muerto's responses were fairly
08:36AM 10 unclear, he claimed he didn't remember it, but Mr. Guzman did
11 not confront him with his statement at that time, which would
12 have been the appropriate time to do that.

13 THE COURT: All right. So maybe I misunderstood.
14 Mr. Lopez, is the idea here is that this is an extrinsic
15 evidence of a prior inconsistent statement, that is, this short
16 transcript here?

17 MR. LOPEZ: Yes, your Honor. It's not -- well, it
18 could appear to be an inconsistent statement, but it's more of
19 a contradiction to his testimony in that he specifically denied
08:37AM 20 having any knowledge with respect to vandalism occurring at
21 Mr. Guzman's home.

22 This transcript indicates that, in fact, he did have
23 knowledge, and he did -- I mean, he admits that we took that
24 young kid, we gave him a royal red hat, and we gave him spray
25 so that he would go and put the chavala 18th Street sign.

1 I have photos, which I will introduce showing
2 Mr. Guzman's car was, in fact, vandalized, and she will further
3 testify that the house was also vandalized. I don't have
4 photos of that, but I do have that.

5 Now, I have photos also of the individual who
6 committed these acts of vandalism. He wasn't wearing a red
7 hat, but they spray painted the Number 18 on Mr. Guzman's car.

8 THE COURT: But the question is it really is an
9 inconsistent statement, so why didn't you confront Muerto with
10 it?

08:38AM

11 MR. LOPEZ: First of all, with respect to inconsistent
12 statements, I attempted to do that, and as you recall, I was
13 having some technical difficulties, and you kind of wanted me
14 to move along and finish my day, which I did, so I tried to get
15 just a general statement from him, which he refused to give to
16 me.

17 I didn't specifically confront him with this
18 statement, however, this also goes to his motives in this
19 matter and his bias with respect to Mr. Guzman. Recall that at
20 this time, Mr. Guzman was refusing to participate in
21 gang-related activities, and it would be our position that
22 Pelon with Muerto's assistance were actually trying to get him
23 to do it and did this in order to get him to do something
24 against the 18th Street gang.

08:38AM

25 Now, granted, I understand that that's an argument

1 that I could potentially make to the jury, but the point is
2 that Muerto testified essentially, I don't know what you're
3 talking about, how could I know about this, I never heard
4 anything about this, and this tape clearly indicates that he
5 did know something about it and that he had a role in it, and I
6 think the jury could hear that because ultimately they have to
7 decide whether or not Muerto's testimony is credible in this
8 case.

9 THE COURT: Ms. Lawrence.

08:39AM 10 MS. LAWRENCE: Notwithstanding Mr. Lopez's failure to
11 confront the witness directly on the stand, if the Court were
12 inclined to let this in as extrinsic evidence of a prior
13 inconsistent statement or to impeach his credibility and show
14 bias against the defendant, the government would definitely ask
15 the Court to give a limiting instruction to that effect that it
16 can only be considered for its proper impeachment purposes.

17 THE COURT: Only for impeachment purposes, not for the
18 truth of the matter asserted?

19 MS. LAWRENCE: Correct, correct, and we contend that
08:40AM 20 it shouldn't be admitted for the reasons we've said, but if the
21 Court does admit it, we want to make sure that it's considered
22 properly by the jury just for that limited purpose.

23 THE COURT: All right. What I'm going to do here is I
24 think the government is correct that I ought to exclude this
25 because the witness was not confronted with it. Under the

1 circumstances, nonetheless, because it's a criminal case, I'm
2 going to admit it subject to the limiting instruction that it's
3 offered or it may be considered solely for impeachment purposes
4 and not for the truth of the matter asserted, so that means
5 that at least based on this evidence that the defendant cannot
6 argue that this happened but rather that Muerto was not a
7 credible witness, so we'll handle it that way. It is, as I see
8 it, extrinsic impeachment evidence.

9 Okay. Anything else as to the evidence as opposed to
08:41AM 10 to the jury instructions or anything else?

11 Okay. Turning -- yes, I'm sorry, Mr. Murphy.

12 MR. MURPHY: With respect to the evidence, I just want
13 to inquire about the Court's practice with respect to the
14 stipulation. Does the Court generally send those to the jury?

15 THE COURT: Not typically, no. It was read aloud.

16 MR. MURPHY: We would request in this case that it be
17 sent to the jury.

18 THE COURT: What's the government's view?

19 MR. POHL: We would object.

08:41AM 20 THE COURT: All right. I guess I'm disinclined to do
21 it unless you have a case or something, Mr. Murphy.

22 MR. MURPHY: I think it's a matter of the Court's
23 discretion your Honor. I do think that there's a significant
24 amount of evidence that was presented quickly, and it would
25 help the jury understand better if they had the stipulation

1 with all of the other evidence.

2 THE COURT: I guess I'm going to stick to my usual
3 practice and just leave it where it is. Obviously, you can
4 argue from the stipulation.

5 MR. MURPHY: Thank you, your Honor.

6 THE COURT: All right. In terms of the jury
7 instructions, you all have the current draft of the
8 instructions and the verdict form.

9 In no particular order, I have considered the issue,
08:42AM 10 and I'm not going to reverse field on the entrapment
11 instruction. That is, I'm not going to give it.

12 MR. MURPHY: For the record, may Mr. Sandoval be
13 permitted to join the request?

14 THE COURT: Yes.

15 MR. NORKUNAS: Also for Mr. Martinez has asked if he
16 would be allowed to join that?

17 THE COURT: Yes. So I will not give an entrapment
18 instruction. The government proposed that I give a
19 supplemental instruction regarding co-conspirator acts and
08:43AM 20 statements, which I'm going to give in a modified form.

21 As an editorial aside, the government's proposal,
22 which appears to be based on a pattern instruction, uses both
23 the word "statements" and "declarations." This is the kind of
24 thing that drives me crazy about jury instructions. There's
25 absolutely no reason to use two different words there, but I am

1 going to give a version of that.

2 Mr. Guzman asked what he calls his fourth supplemental
3 jury instruction concerning the general understanding about the
4 crime. If you turn to page 28, I've modified the last sentence
5 in the top paragraph. I'm not going to give the instruction
6 that Mr. Guzman has requested because I don't think it's
7 correct, but just to be clear, I've added some words there,
8 that the government must prove that those were involved
9 intended to agree and shared a general understanding about the
08:44AM 10 crime because the agreement is the critical point there, and so
11 the government must prove an intent to agree.

12 MR. LOPEZ: Your Honor.

13 THE COURT: Yes.

14 MR. LOPEZ: On that point, in order to agree with this
15 particular conspiracy, you also have to have the specific
16 intent to commit those racketeering acts at the time of the
17 agreement.

18 THE COURT: Well, I don't think that's right. You
19 have to intend to join a conspiracy with the intent and
08:45AM 20 understanding that someone else in the conspiracy intends to
21 commit two racketeering acts. So, again, if it's a conspiracy
22 to rob a bank, you don't have to intend to rob the bank
23 yourself, but you have to intend to join an agreement in which
24 someone else is going to rob the bank.

25 MR. LOPEZ: You have to specifically intend that the

1 purpose of the conspiracy is to rob a bank?

2 THE COURT: Yes, and the general understanding of the
3 crime would be that it's a bank robbery. Now, whether it's the
4 Savings Bank X or Savings Bank Y, you don't necessarily have to
5 agree.

6 MR. LOPEZ: Agreed, your Honor, but my understanding
7 of conspiracy law is that there's actually two different
8 intents at issue. There is the intent to enter into an
9 agreement, and then there's a specific intent to commit the
08:45AM 10 crime alleged.

11 In this case, there had to be an intent to enter into
12 an agreement with others and with the specific intent that
13 racketeering activities would be the objective of the
14 conspiracy.

15 That's what the *Haldeman* case not with respect to
16 RICO, but that's how specific intent is explained in connection
17 with the conspiracy law.

18 THE COURT: I think it's all one intent.
19 Ms. Lawrence, do you want to respond to this?

08:46AM 20 MS. LAWRENCE: No, your Honor, I do think it's all one
21 intent, and I understand counsel's point that there is a
22 specific intent to agree to be part of the conspiracy, and
23 there also has to be an intent to agree that someone or one
24 member or another member of the conspiracy would commit the
25 racketeering acts.

1 As I understand this instruction on page 28, the point
2 of this is to say they have a general understanding of the
3 crime, meaning they understand that the RICO conspiracy, the
4 MS-13 conspiracy, will commit racketeering acts, and your other
5 instructions make very clear that they have to be -- they have
6 to know what type or types of racketeering acts they are, not
7 that there would be an attempted murder on a specific date or
8 there would be a murder on another specific date, or who the
9 victims would be, and I think that saying a general
08:47AM 10 understanding of the crime encapsulates that idea.

11 THE COURT: All right. I think this is standard
12 language, and I think the point needs to be made that you have
13 to agree -- you have to intend to enter into an agreement. The
14 agreement has to be the specific agreement, in this case, to
15 commit racketeering in such-and-such a way, but you don't have
16 to agree to every detail of the agreement or every detail of
17 how the crimes are going to be committed. You don't have to
18 agree in advance, yes, we're going to murder Irvin De Paz on
19 such-and-such a date, it's rather a general understanding that
08:48AM 20 others will commit a racketeering act, including murders or
21 assault with intent to commit murders, so I think this captures
22 the point, and I'm inclined to leave it as it is.

23 MR. LOPEZ: Can you note my objection for the record?

24 THE COURT: Yes. Sandoval has.

25 MR. MURPHY: Your Honor, with respect to robbery --

1 THE COURT: Yes, I'm sorry.

2 MR. MURPHY: -- then we withdraw that.

3 THE COURT: Okay. I think the way it's left now, just
4 to be clear, the indictment does charge robbery as racketeering
5 acts. There's been no evidence as to robbery, at to these --
6 well, for all practical purposes, putting aside whatever Pelon
7 may have done, so that's out of the indictment.

8 That leads to a second point or a further point, which
9 is the description of the agreement charged in the indictment.

08:49AM 10 At page 34 is basically what the government submitted and what
11 the parties appeared to have agreed on.

12 My question here is normally we would list the members
13 of the conspiracy. That's, you know, 50 names or so, which I'm
14 not inclined to do. Some of the names never even came up, but
15 would it not be best to say that, well, for example, to
16 identify, among other persons, Muerto, Animal, Caballo, Brujo,
17 and, again, I apologize for using the street names, the other
18 persons who were specifically named in the indictment as
19 co-conspirators, which, again, helps put some flesh on the
08:49AM 20 bones of this agreement.

21 On the other hand, if the parties agree that's
22 unnecessary, we don't have to do it. I'm not trying to either
23 help or hurt either side, I'm just trying to be accurate about
24 what we're describing here.

25 MS. LAWRENCE: We would like to do that, your Honor.

1 We were focusing on the four defendants as you've been
2 describing throughout the instructions, but it would give the
3 jury a clearer picture of the scope of the indictment to
4 include at least those individuals that were identified by
5 witnesses during the trial.

6 THE COURT: All right. So the fifth superseding
7 indictment at paragraph 25 includes I think of people whose
8 names may have come up: Crazy; Flaco; Casper; Playa; Lobo;
9 Brujo; Smiley, Danger; Animal; Vida Loca; Muerto; Caballo and
08:51AM 10 Tigre. There may have been passing reference to some other
11 names, but I think I would propose to include those and make it
12 clear that it is among others.

13 MR. POHL: I understand. You had everybody on our
14 list, Judge, that we just hastily prepared. One addition was
15 in the indictment, too, and it did mention briefly Jose'
16 Andrade, and there was one person who was not charged but whose
17 photograph was in the exhibits we discussed, which is
18 Vincentino and his correct name is --

19 THE COURT: Well, the indictment doesn't charge that,
08:52AM 20 in other words, it says other persons known and unknown to the
21 grand jury. I want to stick with the indictment because I
22 don't want to go beyond it.

23 MR. POHL: That's fine.

24 THE COURT: All right.

25 MR. MURPHY: Your Honor, we understand the Court's

1 view, but we would object to this. I think that we agreed to
2 this essentially as written as a piece, and I think that
3 singling out those names under the circumstances rather than
4 proposing what the government -- with going what the government
5 proposed essentially would cause the jury to place undue
6 emphasis on those individuals rather than others. I don't
7 think it makes sense to list all of them. I do think that
8 listing only the defendants and indicating that other persons
9 were also involved would be sufficient to alert the jury.

08:53AM 10 THE COURT: Well, again, this is a substitute for
11 having the indictment go to the jury, which is normally what we
12 would do. I'm concerned that the way it's drafted makes it
13 like this is a four-person conspiracy. It doesn't say that,
14 but it's what the indictment says, it's the conspiracy charged
15 in the indictment, and I think that's, you know, I keep saying
16 it's got to be the agreement charged in the indictment, and I
17 think I need to describe that agreement, and so I'm inclined to
18 do that.

19 Let's see, what else?

08:54AM 20 MR. LOPEZ: Your Honor, for the record, please note
21 Mr. Guzman's objection.

22 THE COURT: Yes. All right. The government proposed
23 that I remove certain nonracketeering acts. I think it was
24 accessory after the fact to murder, which I think we can remove
25 from that. It's confusing because it's a RICO predicate, but

1 it's not a charged RICO predicate in this case.

2 MR. MURPHY: Your Honor, I think that's really a
3 critical aspect of the defense here, and I think, Number 1,
4 there is a single District Court case, Judge Wolf's case that
5 describes it as a RICO predicate. Number 2, it's not charged
6 as a RICO predicate in the indictment.

7 I assume that the government did that intentionally
8 because it did not want to include among the list of
9 racketeering acts an act that might result in conviction and
08:55AM 10 then reversal, and whether the Court includes a description of
11 bad act as not charged or whether it includes a description of
12 that act as not a racketeering act, I think, I personally am
13 indifferent to, but I think viewed in the centrality of the
14 Animal beating in this case and the fact that the government
15 apparently deliberately chose not to charge accessory after the
16 fact, that we should be entitled to a specific instruction that
17 accessory after the fact is not charged, at least as a
18 racketeering act in this case.

19 MS. LAWRENCE: Your Honor, there were or there is
08:55AM 20 other authority for the position that it is a racketeering
21 predicate. I didn't include the other cases because they
22 weren't from this circuit or this district and some of them are
23 unpublished.

24 I think even in the case that we did cite, Judge Wolf
25 noted that it was a serious question whether it is, in fact, a

1 racketeering predicate. At the very least, the question is
2 unclear, and I believe it would be wrong, if not erroneous, to
3 charge the jury that it is not a racketeering act in this very
4 specific way.

5 THE COURT: All right. Here's what I'm going to do.
6 At the top of page 52, I'm going to say the following crimes
7 under federal and Massachusetts law do not qualify as
8 racketeering acts or are not charged as such in the indictment,
9 and then I'll put the paragraph back in.

08:56AM 10 MR. MURPHY: Thank you, your Honor.

11 THE COURT: Defendant Martinez' request for a change
12 in the withdrawal from the conspiracy instruction, I don't
13 think it's correct. This is Document Number 1984, and so I'm
14 not inclined to give it, and then Defendant Larios has jury
15 instruction regarding a missing witness instruction, which
16 relates to, I guess, CW-1.

17 Mr. Iovieno, do you want to be heard on that?

18 MR. IOVIENO: No, your Honor, I'll just rest on my
19 papers.

08:57AM 20 THE COURT: Okay. Does the government want to
21 respond? Ms. Lawrence.

22 MS. LAWRENCE: Yes, your Honor. We've heard
23 throughout leading up to the trial and somewhat during the
24 trial about CW-1 and his availability, and I think the record
25 has been made clear at this point that the government has

1 always indicated his willingness to make him available, produce
2 him since he is although not in WITSEC, still under -- he's
3 trying to avoid being -- anyone knowing where he is.

4 THE COURT: Whatever, I ordered the government either
5 to give the address so he could be subpoenaed or produce him,
6 and you agreed to produce him.

7 MS. LAWRENCE: We agreed to that, so that's the state
8 of the record, so he is available to both sides. We're not
9 going to have him -- give them the address, as the Court said
08:58AM 10 we did not have to, to let an investigator walk up to his front
11 door and knock, but they've never asked us to make him
12 available by phone to speak with him directly. Had they done
13 so, we would have, and I think that's the state of the record
14 at this point.

15 I also would note as to the other part of the missing
16 witness instruction standard or showing, there's no evidence
17 that I'm aware of that he would be -- CW-1 would be so
18 overwhelmingly favorable to the government that it would
19 entitle the defense to give this instruction.

08:58AM 20 MR. IOVIENO: May I respond briefly, your Honor?

21 THE COURT: Yes.

22 MR. IOVIENO: As far as his physical availability,
23 that was made known to us around the beginning of the trial,
24 just before the beginning of trial. It was never made known to
25 us that he would be available to be interviewed. In fact, it

1 was made known to us that he would not be available for an
2 interview, just physically to be able to be called as a witness
3 at trial, so I don't think that is a true statement as to his
4 availability.

5 I mean, legally I pointed out a case that
6 established -- First Circuit case talking about he's legally
7 unavailable, not physically. I mean, I think to put a witness
8 on that you can't interview, that you can't talk to, I
9 certainly wouldn't do it, so that's why I believe he's legally
08:59AM 10 unavailable to the defense, and I'd request that the
11 instruction -- I understand what the Court ruled earlier. I
12 just alerted the Court to some subsequent case law that I
13 found, and I renewed my request.

14 THE COURT: All right. I don't think the standard has
15 been met here. This is kind of a peculiar iteration given the
16 fact that he had been kicked out of the program, but,
17 nonetheless will be made available by the government or would
18 be made available on request, and it's not -- well, it's not
19 clear to me that the standard has been met, and so I'm not
09:00AM 20 going to give the instruction.

21 All right. Anything else on the jury instructions?
22 We've done some wordsmithing, hopefully not changing the
23 substance of it. We were fiddling this morning with the
24 description of the drug offenses, which have changed slightly,
25 if you look at page 57 and thereafter. Again, I don't think

1 they're wrong. They're fairly straightforward common crimes,
2 it's just in the way the first draft they were described, they
3 weren't quite right.

4 All right. Anything else, or shall I have juror
5 Number 2 brought down? Mr. Murphy.

6 MR. MURPHY: Your Honor, these are the ones that were
7 circulated on Friday. It appears that the Court has not
8 concluded the conspiracy is not a corrupt instruction?

9 THE COURT: That's correct, I did not. I think my
09:01AM 10 instruction on page 28, mere similarity of conduct and mere
11 association suffices under the circumstances to address that
12 issue.

13 MR. MURPHY: Thank you. In case there may be some
14 kind of waiver later, note my objection.

15 THE COURT: Yes. Mr. Pohl.

16 MR. POHL: Thank you. I know this is probably the
17 third time we're going over this ground this morning, but I'm
18 not 100 percent sure that I understood what the Court's
19 decision was with respect to the accessory after the fact
09:01AM 20 language.

21 THE COURT: Accessory fact, I am going to include that
22 language. I'm going to change the description at -- what page
23 did I say it was on? I'm sorry, what page?

24 THE CLERK: 52.

25 THE COURT: The first sentence will now read: The

1 following crimes under federal and Massachusetts law do not
2 qualify as racketeering acts or are not charged as such in the
3 indictment, and we'll go through and it will include accessory
4 after the fact.

5 MR. POHL: Your Honor, I guess I'd urge you to
6 reconsider that along the lines of what Ms. Lawrence said. The
7 only effect of listing that crime in the indictment would be
8 when it does implicate *Alleyne* factors to do so, and I think,
9 one of the reasons among the many others that were discussed
09:02AM 10 here today that it was not included in the indictment is
11 because they don't believe it would have triggered an issue in
12 this case, I don't believe given the guidelines and the
13 accessory after provisions, no matter -- I think particularly
14 in light of the criminal history of these defendants, you would
15 not gotten to above a 20-year sentence, so I don't think that
16 the simple fact that this crime was not listed in the
17 indictment is evidence of intent on the government to not
18 include it, and I don't think --

19 THE COURT: Well, the government's intent isn't
09:03AM 20 relevant, the question is what does the jury have to find
21 beyond a reasonable doubt, and specific crimes having been
22 charged in the indictment, those are the ones the government
23 has to prove.

24 The only reason I give this instruction at all is,
25 frankly, it's confusing. Massachusetts, you know, has managed

1 to create what appears to be the most confusing set of criminal
2 laws in the entire United States, and it's hard even for
3 lawyers to keep it straight, Judges certainly don't always keep
4 it straight, and the point there is to say here's what it is
5 and to make clear here's what it isn't.

6 I'm not trying to do anything more than that, and, you
7 know, suppose the only evidence were accessory after the fact
8 of murder, you know, that was the only evidence, presumably,
9 the government would lose, right, I mean, it's not charged as a
09:04AM 10 racketeering act, so that's the reason for that.

11 MR. POHL: All right.

12 THE COURT: Yes, Mr. Norkunas.

13 MR. NORKUNAS: I did file a supplemental notice over
14 the weekend seeking to have, again, the withdrawal from the
15 conspiracy and looking to play out what I had orally presented
16 to the Court last week changing that there has to be in this
17 particular case, that the conspiracy would have to have a
18 beginning, middle and end, but in this case, where it was a
19 government informant and Agent Wood indicated he couldn't do
09:04AM 20 the October and December in his testimony unless Washington
21 gave him permission and his superiors gave him permission and
22 they signed off on an authorization plan, and, therefore, there
23 would have to have been an ongoing conspiracy that would run
24 from February through December and having those types of words
25 changed for the jury.

1 THE COURT: Well, as I interpreted your request, which
2 is Number 1984, you're saying you can only withdraw from a
3 conspiracy while it's going on, which and you say once it had
4 ended -- there's two things. First off, to the extent you're
5 saying that there is -- there are two conspiracies here rather
6 than one or some other variance, whatever you can argue that,
7 that's not what we're talking about.

8 MR. NORKUNAS: Thank you.

9 THE COURT: But, I mean, I guess it's technically true
09:05AM 10 that you can only withdraw from a conspiracy while it is
11 occurring, right, once it's over, you can't withdraw from it, I
12 mean, once it has achieved its ends, but it's confusing to me
13 the way you have framed it because it suggests that -- well,
14 you tell me. You tell me what it is you're trying to achieve
15 here.

16 MR. NORKUNAS: Well, that's the issue here, Judge,
17 what I was trying to do is instead of -- the government's
18 position is the conspiracy never stopped, that there was still
19 an ongoing activity, and it's clear from the testimony of
09:06AM 20 Agent Wood, there was not, they had no authority. CW-1 was
21 only acting under the authority of the FBI to run these
22 efforts.

23 Once the February effort was concluded, Agent Wood
24 said he could not start up or go again unless there was a plan
25 submitted for a new activity, I'm saying a new activity, an

1 activity, and it was signed off and authorized by others and a
2 plan put into place. Since the conspiracy had ended and Muerto
3 had said, you know, to Cesar, you're fired, he has -- he's out
4 of that conspiracy.

5 THE COURT: Well, you can argue that the conspiracy
6 was over, that he was never a part of it, that it was a
7 different conspiracy, but we don't have the full confession to
8 authorities or a communication, you know, to his
9 co-conspirators he's abandoned the enterprise. I mean, there
09:07AM 10 isn't any evidence of withdrawal.

11 MR. NORKUNAS: Well, in this particular case, the
12 co-conspirators didn't really -- were not part of that
13 conspiracy at that time. That would have had to have been
14 Muerto. He's not charged with that, so the only person who
15 could have said I'm done with you would have been CW-1 and
16 Muerto.

17 THE COURT: All right. I'm going to leave the
18 instruction as it is. Again, to the extent that you were
19 saying he was not a part of this conspiracy, this conspiracy
09:07AM 20 never existed, there were two separate conspiracies, all of
21 that I think is fair game, but withdrawal, the government --
22 you know, the defendant has the burden of showing he did
23 withdraw once the government has established it was a
24 conspiracy, and there's no evidence of withdrawal here.

25 Certainly, there's no evidence of withdrawal during

1 the time period of the conspiracy, whatever its end point is,
2 and so I think it's confusing to suggest that because the
3 government said it never ended and you say that the conspiracy
4 did end, that the defendant can only withdraw while the
5 conspiracy is ongoing, which may be technically true. It's
6 confusing in context, whereas, you know, I'm giving the
7 instruction saying here's what it takes to prove withdrawal.

8 And either, you know, assuming the government has
9 proved the conspiracy, it's defendant's to prove withdrawal.
10 Anyway, I think this is right, I think it's standard language,
11 and I'm going to leave it where it is.

12 MR. NORKUNAS: Note my objection, I'm arguing there
13 was a conspiracy, he was in it, and Muerto did say get out.

14 THE COURT: Which I think is fair game and not
15 inconsistent with the instructions.

16 MR. NORKUNAS: Thank you.

17 THE COURT: Mr. Murphy.

18 MR. MURPHY: Your Honor, before the jury is inquired
19 of, I think an outstanding housekeeping matter we have is the
09:09AM 20 threat assessment. Before the defendant rests, I'd simply like
21 to inquire as to the status of that.

22 THE COURT: I think I had directed that it be provided
23 under seal to counsel. Do counsel want to pursue it further?
24 What do you want to do?

25 MR. MURPHY: I have not seen it, your Honor.

1 THE COURT: Well, you should have.

2 MR. POHL: I'm sorry, your Honor, I'm happy to do the
3 that.

4 THE COURT: All right. Let's do that forthwith. I
5 thought I had ordered.

6 MR. POHL: Friday, you did, Friday, I think, actually
7 surprised all of us with the speed at which events have taken,
8 and no one has talked about it since, so I have no problem
9 getting that and giving it to counsel. I apologize,

09:09AM 10 THE COURT: My intent was to take it a step at a time,
11 and let's get that to you forthwith. In fact, you can begin by
12 reading my copy to jumpstart the process a bit.

13 Lisa, make sure that's what's in the envelope before I
14 give it.

15 Okay. Let's get Juror Number 2.

16 THE CLERK: All rise.

17 (THE FOLLOWING OCCURRED AT SIDEBAR:)

18 THE COURT: Mr. K, I called you to sidebar because I
19 had heard reports that you might have been either talking about
09:12AM 20 the evidence or the case or trying to engage others in the
21 conversation. I'm sorry, to be so blunt about it.

22 THE JUROR: No.

23 THE COURT: And so that requires me to ask you whether
24 or not that's true. I guess I'll put it to you, is it true,
25 did you try to get others discuss the case or discuss the case

1 with others?

2 THE JUROR: No, not details about the case or anything
3 specific. Again, what I told you last Friday, we had talked in
4 vagaries about it.

5 THE COURT: I'm sorry?

6 THE JUROR: In vagaries, the jury we had discussed but
7 nothing specifically about the case.

8 THE COURT: Do you remember what it was you discussed?

9 THE JUROR: Like I said, we had couple of us we would
09:13AM 10 talk overall, but we wouldn't discuss the details of the case,
11 and I definitely would not try to, as I've told you before,
12 it's a legal system, I take this very seriously.

13 THE COURT: And I guess I want to ask, I'm not sure
14 what you mean vague things about the case. Can you give me an
15 example?

16 THE JUROR: So this is an incident where you had
17 raised your voice.

18 THE COURT: Yes.

19 THE JUROR: When we had gone up to the jury room, we
09:13AM 20 made a comment about that.

21 THE COURT: But nothing since then?

22 THE JUROR: No, nothing that would be directly about
23 the case. We all talked about last week when we were told that
24 the case was speeding up, we did discuss that a little bit. I
25 have not been trying to actively engaged or try to sway

1 anyone's opinion or discuss the details of the case at all.

2 THE COURT: Can I get you to step aside, let me talk
3 to the lawyers.

4 THE JUROR: Yes.

5 THE COURT: All right. Counsel, what do you want me
6 to do here?

7 MR. POHL: I think he's indifferent. What he's
8 described is the kinds of conversations that happened before
9 our voir dire when we had the discussions about safety issues
09:14AM 10 with the jurors. He hasn't said anything since then. I don't
11 think there's anything else to say. I think he's indifferent,
12 and he should remain on the jury.

13 MR. LOPEZ: I don't agree, your Honor. I think he's
14 being intentionally vague. He knows what you told him to do,
15 and he's not giving you the specifics you're asking for. I
16 would ask that he be removed.

17 MR. POHL: I mean, you asked him if he talked about
18 it, and he said no, I mean there's no other -- I mean, your
19 statement.

09:15AM 20 THE COURT: One at a time.

21 MR. POHL: Your statement suggests that you know that
22 there's something else to say, and the Court asked him a clear
23 question, he gave a clear answer, and he also made clear that
24 there was a break in behavior in the jury between the kinds of
25 things that maybe got discussed and safety issues were raised,

1 and I don't think there's anything else to ask on.

2 MR. LOPEZ: I guess it's the same thing that you had
3 about Juror Number 5, you didn't believe her, and you wanted
4 her on. I don't believe this guy --

5 MR. POHL: The difference between Juror Number 5 and
6 this person is that there's a juror on the panel that everyone
7 credited who specifically said what she said, and she gave a
8 different account, so you believed that juror in every respect
9 except for the one respect.

09:15AM 10 THE COURT: Anyone else want to be heard on this
11 issue?

12 MR. NORKUNAS: Judge, I concur with Mr. Lopez. I have
13 an uneasy feeling because it was not in a direct response, yes,
14 no, I'm not sure what that was, and I think in the context of
15 this case that's taken place over the past, perhaps just make
16 him an alternate if he's not taken off, if that's conceivable,
17 if not, just remove him.

18 THE COURT: All right. What I'm going to do is I
19 certainly understand the arguments, and arguably the most
09:16AM 20 prudent thing to do is simply to discharge him, but since the
21 parties don't agree with that, I'm not sure it has risen to
22 that level.

23 I think, I, again, while this may have been less than
24 quite perfect, I do believe that when one indicates that he has
25 not attempted to discuss or sway other jurors, and I'm going to

1 remind him or admonish him and leave him on the jury.

2 Mr. K. Okay. Thanks. I just want to, I guess,
3 remind you or, you know, firmly instruct you that particularly
4 at this time where we may have arguments that are broken up
5 with breaks and it may spill over until tomorrow that it's
6 critically important discuss that the jury discuss nothing
7 about the case, okay, of any kind.

8 THE JUROR: Yes, your Honor.

9 THE COURT: Thank you.

09:17AM 10 THE JUROR: Thank you.

11 (SIDEBAR CONFERENCE WAS CONCLUDED)

12 MR. POHL: Can we have 30 seconds before the jury
13 comes in?

14 THE COURT: Why don't we go line them up. Do you need
15 30 seconds to get down the hall?

16 THE COURT: Yes.

17 MR. POHL: That's going to be more than 30 seconds.

18 THE CLERK: All rise for the jury.

19 (JURORS ENTERED THE COURTROOM.)

09:24AM 20 THE CLERK: Thank you. You may be seated. Court is
21 now back in session.

22 THE COURT: Welcome back, ladies and gentlemen. I
23 hope you enjoyed your three-day weekend. As I indicated, we
24 have some evidence that needs to be completed before we get
25 into the closing arguments.

1 Mr. Lopez.

2 MR. LOPEZ: Yes, your Honor. Thank you. The defense
3 calls Evelyn Torres.

4 EVELYN TORRES, having been duly sworn by the Clerk,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. LOPEZ:

8 Q. Good morning.

9 A. Good morning.

09:25AM 10 Q. I'm going to ask you to speak up and speak into that
11 microphone.

12 A. Absolutely.

13 Q. Can you please tell the jury your name?

14 A. Good morning. My name is Evelyn Torres.

15 Q. Please try to speak up. Can you spell your last name?

16 A. T-o-r-r-e-s.

17 Q. What is your relationship to Edwin Guzman?

18 A. He's my husband.

19 Q. How long have you been married to Edwin?

09:25AM 20 A. Thirteen years.

21 Q. Since 2005?

22 A. 2005, yes.

23 Q. Do you and Edwin have any children?

24 A. We have two children.

25 Q. And how old is your first child?

1 A. Twelve years old.

2 Q. And is it a boy or a girl?

3 A. Two girls.

4 Q. And how old is your second child?

5 A. Four years old.

6 Q. What city or town do you live in?

7 A. Revere.

8 Q. On what street?

9 A. Barrett Street.

09:25AM 10 Q. And how long have you lived on Barrett Street?

11 A. Five years.

12 Q. And where did you live before Barrett Street?

13 A. Pratt Street.

14 Q. Who owns Pratt Street?

15 A. My husband.

16 Q. Do you know when he bought Pratt Street?

17 A. 2010.

18 Q. And how long did you live on Pratt Street?

19 A. We lived there like five years.

09:26AM 20 Q. So from 2010 to 2015?

21 A. Yes.

22 Q. And since 2015?

23 A. Until now, I still lived there.

24 Q. You've lived at Barrett Street?

25 A. Barrett Street, yes.

1 Q. Now, how far is the Pratt Street home from the Revere
2 Police Station?

3 A. Like two blocks.

4 Q. Who currently lives at the Pratt Street house?

5 A. The previous owners and our son with his mother.

6 Q. And does Edwin also own -- does Edwin also own the Barrett
7 Street residence?

8 A. Yes, sir.

9 Q. And who else owns it?

09:26AM 10 A. His mother.

11 Q. And who currently lives at the Barrett Street residence?

12 A. His mother, my two girls, I do, and a couple with two
13 children.

14 Q. Now, directing your attention to June of 2012, was Edwin
15 employed?

16 A. Yes, sir.

17 Q. Where?

18 A. He was working at Aramark -- Amtrak.

19 Q. And how long did he work there for?

09:27AM 20 A. He worked there a long time, like until he got employed in
21 2015. He was like long.

22 Q. Okay. And did he work anywhere before FW Russell?

23 A. Yeah, same, Amtrak. The same, until he got employed at
24 FW Russell, yeah.

25 Q. Now, directing your attention to 2010, did you say

1 something to Edwin about him going out to bars?

2 A. Those are kind of big arguable time, in bars and drinking,
3 yeah.

4 Q. And what did you tell him?

5 A. That we could ended up. He stop drinking.

6 Q. And did you tell him -- what else did you tell him about
7 going to bars?

8 A. That he have to get his mind together and all this stuff,
9 like we have get time for our family, and he did listen.

09:28AM 10 Q. And so did he stop going to bars?

11 A. Uh-huh.

12 Q. Now, is Edwin an American citizen?

13 A. He is.

14 MR. LOPEZ: Your Honor, can I just show the Elmo for
15 the witness?

16 THE COURT: Yes.

17 Q. Do you know what this is?

18 A. My husband.

19 Q. And it looks like it's some type of certificate?

09:28AM 20 A. His naturalization, yes.

21 Q. His certificate of citizenship?

22 A. Yes, sir.

23 Q. And is this the original?

24 A. Yes.

25 MR. LOPEZ: Your Honor, I would move to admit it --

1 MS. LAWRENCE: Objection, relevance, your Honor.

2 MR. LOPEZ: -- as Exhibit 234.

3 THE COURT: I'll allow it. Admitted, 234.

4 (Exhibit No. 234 received into evidence.)

5 MR. LOPEZ: Can I show it to the jury?

6 THE COURT: Yes.

7 Q. Now, when did Edwin become an American citizen?

8 A. 2001.

9 Q. Do you remember the month?

09:29AM 10 A. No, I'm not quite sure about the month.

11 Q. Does it say November 16, 2001 at the bottom there?

12 A. Yes. I know it was in 2001.

13 Q. Now, at some point, did Edwin receive a commercial
14 driver's license?

15 A. He did, yeah.

16 Q. And do you know why he -- why he wanted a commercial
17 driver's license?

18 MS. LAWRENCE: Objection.

19 THE COURT: Sustained. Sustained in that form.

09:29AM 20 Q. At some point, did he get a commercial driver's license?

21 A. He did.

22 Q. And do you know the reason he obtained that license?

23 A. For a better life, for a better job, for a better --

24 MS. LAWRENCE: Objection.

25 THE COURT: Overruled.

1 Q. Did he need a license in order to work for FW Russell?

2 A. He did, he drives trucks. Yes, sir.

3 Q. And do you recall when he received that license?

4 A. I'm sorry?

5 Q. Do you recall when he received that license?

6 A. Yes.

7 Q. When?

8 A. That was in 2012.

9 Q. Now, directing your attention to the early morning hours
09:30AM 10 of July 26, 2015, do you recall something happening that
11 evening?

12 A. Yes.

13 Q. What happened?

14 A. 2015?

15 Q. Yes, July 26, 2015.

16 A. That's when he got his car vandalized. I was sleeping,
17 and we heard this big bomb in our window.

18 Q. Let me step back a second. Do you recall something
19 happening on July 26, 2015?

09:31AM 20 A. Yes, sir.

21 Q. And you mentioned something about a car. What I want you
22 to do is tell the jury what happened that night before you saw
23 the car.

24 A. Oh, I was sleeping and I hear this big bang in our window.
25 I get up. I quickly went to my daughter's room, and I see

1 everything was fine with them, and then my car alarm went on
2 very hard and very noisy, and then he told me to stay in the
3 living room, and then he opened the door, and it was the big
4 sign of two numbers in our door, the 1 and 8. He said, "Call
5 the police." I did call the police, and police came. He came
6 outside, and he -- we noticed his car was painted, also, too.

7 MR. LOPEZ: Now, for the witness only, your Honor.

8 Q. Do you recognize what's been marked as Exhibit 241.1?

9 A. Yes, sir. I took that picture.

09:32AM 10 Q. Is this a photograph?

11 A. It's a photograph, yes.

12 Q. And did you take this photograph?

13 A. Yeah, I have it on my phone.

14 Q. And do you remember what time you took this photograph?

15 A. It was around 2:16, 2:18. It was very early in the
16 morning.

17 Q. And how do you know that?

18 A. Because it's etched in my phone. When you take a picture,
19 it says the time and date.

09:32AM 20 MR. LOPEZ: Your Honor, can I move to admit this?

21 THE COURT: All right, it's admitted, 241.1.

22 (Exhibit No. 241.1 received into evidence.)

23 MR. LOPEZ: Show it to the jury?

24 THE COURT: Yes.

25 Q. Now, can you tell the jury what's in this photo?

1 A. Two numbers. I start erasing it, but he says take a
2 picture of it because I wanted to clean it up. I was just
3 scared, and it's 1 and 8.

4 Q. And do you see the word "Escalade" in that photo?

5 A. Yes.

6 Q. And what kind of car did Edwin own in July of 2015?

7 A. The black car, Escalade, Cadillac, yes.

8 MR. LOPEZ: Just for the witness, your Honor.

9 Q. I'm going to show you another photo that's been marked as
09:33AM 10 Exhibit 241.2. Do you recognize that?

11 A. Yes, sir.

12 Q. And do you recognize the car in that photo?

13 A. Yes, that's his car.

14 Q. And do you recognize the person standing next to the car?

15 A. No, sir.

16 Q. Do you know how this photo was taken?

17 A. He got cameras for --

18 MS. LAWRENCE: Objection, your Honor.

19 THE COURT: Sustained.

09:34AM 20 Q. Let me step back. Is your home, is the Barrett Street
21 home equipped with outside cameras?

22 A. Yes.

23 Q. How many outside cameras?

24 A. There's four.

25 Q. Do you know whether or not this photo came from one of

1 those outside cameras?

2 A. Yes.

3 Q. How do you know that?

4 A. Because after he got his car like that, we went over the
5 cameras, and we see the tapes that this guy was doing that that
6 night.

7 Q. And did someone take a photo of what was being shown on
8 the cameras?

9 A. He did with his phone and I was next to him.

09:34AM 10 Q. Okay. And what did you do with that phone?

11 A. I took his phone to Walgreens and I revealed them.

12 Q. And is this one of the photos that you had made at
13 Walgreens?

14 A. Yes, sir.

15 MR. LOPEZ: Your Honor, at this point, I'd move to
16 admit Exhibit 241.2.

17 THE COURT: All right. It's admitted, 241.2.

18 (Exhibit No. 241.2 received into evidence.)

19 MR. LOPEZ: And show it to the jury?

09:35AM 20 THE COURT: Yes.

21 Q. And, again, this photo shows Edwin's car?

22 A. Yes.

23 Q. And it shows a individual in what appears to be white
24 clothing standing next to it?

25 A. Yes.

1 Q. And that was taken the evening of July 25th -- 26, 2015?

2 A. Yes.

3 MR. LOPEZ: Your Honor, I have one more photo just for
4 the witness.

5 Q. I show you what's been marked as Exhibit 241.3. Do you
6 recognize this photo?

7 A. Yes.

8 Q. And was this photo created in the same way as the previous
9 photo?

09:35AM 10 A. The same way, yes.

11 Q. You took his phone to Walgreens and had it developed?

12 A. Yeah.

13 MR. LOPEZ: Your Honor, I'd move to admit this photo.

14 THE COURT: All right. It's admitted, 241.3.

15 (Exhibit No. 241.3 received into evidence.)

16 MR. LOPEZ: Show it to the jury, please.

17 Q. And is that a closer picture of the person that was at
18 your house that evening?

19 A. Yes.

09:36AM 20 Q. And, again, is that Mr. Guzman's car?

21 A. It is his car, yes.

22 Q. And can you tell what, if anything, the person is holding
23 in his hands?

24 A. It was a paint bottle.

25 Q. Okay. And do you -- I take it -- well, strike that. Was

1 there any other damage done to your home that evening?

2 A. Just all the car when the guy throwed the brick on the
3 window, it banged my small car, my Honda, and that's it.

4 Q. Just to be clear, you did not see anyone throw a brick,
5 correct?

6 A. No.

7 Q. What did you see when you went outside and looked at your
8 car?

9 A. The two signs, the two paints, one in the door and the
09:37AM 10 other one was on the car.

11 Q. So, are you saying that the door to your house was also
12 painted in a manner similar to Exhibit 241.1?

13 A. Exactly the same.

14 Q. And what about damage to your car?

15 A. It was just a small dent.

16 Q. Did you take photos of the damage to the house?

17 A. No. There was no damage to the house.

18 Q. Did you take photos of the damage to your car?

19 A. No, I didn't.

09:37AM 20 Q. Were you able to clean off the "18" that was spray painted
21 onto Mr. Guzman's vehicle?

22 A. Yes, with --

23 Q. And after it was removed could you still see that it was
24 there?

25 A. Yeah, it was damaged. It was trash.

1 Q. Now, I show you what's been marked as Exhibit 16. Do you
2 see that tattoo?

3 A. Yes.

4 Q. Do you know how long Edwin has had this tattoo?

5 A. When I got married with him, he had it already.

6 Q. And how old was he when you were married?

7 A. Nineteen years old.

8 MS. LAWRENCE: Objection.

9 THE COURT: Overruled.

09:38AM 10 Q. So he's had it since at least the time he was married at
11 age 19?

12 A. No, when he was with me, he had it before. I don't know
13 when before.

14 Q. Okay, but prior to him getting married?

15 A. Yeah, he had it.

16 Q. Now, do you recognize the name on that tattoo?

17 A. Yes.

18 Q. And what name is depicted in that tattoo?

19 A. Marcelina.

09:38AM 20 Q. And who is Marcelina?

21 A. It's his grandmother.

22 Q. And do you see a date -- I realize it's hard in this
23 picture, but do you see a date in this photo?

24 A. 5-3-92.

25 Q. And what is the significance of 5-3-1992?

1 A. It's the day that she died.

2 Q. The day that Edwin --

3 A. His grandmother died.

4 MR. LOPEZ: I have no further questions, your Honor.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MS. LAWRENCE:

8 Q. Ms. Torres, you testified that you were scared when you
9 saw the 1 and the 8 painted on your house and on the car; is
09:39AM 10 that correct?

11 A. Yes, ma'am.

12 Q. And you were scared because you knew what the 1 and 8
13 stood for, right?

14 A. I was just scared because my kids.

15 Q. Because you knew that 1 and 8 symbolized something that
16 was scary, correct?

17 A. Correct.

18 Q. Okay. And you said that Mr. Guzman stopped going to bars
19 after you told him to, correct?

09:40AM 20 A. Correct.

21 Q. But he didn't stop going to the garage in Everett, did he?

22 A. I never know where he go out when he go out, I just know
23 he got out to relieve stress.

24 Q. And he did go out on the weekends and late at nights,
25 correct?

1 A. Not as much often.

2 MS. LAWRENCE: No further questions, your Honor.

3 THE COURT: Mr. Lopez, anything further?

4 MR. LOPEZ: Yes, at this time, I would call --

5 THE COURT: I'm sorry. You may step down.

6 MR. LOPEZ: -- Stephanie Amador, who I believe is just
7 outside the door, your Honor.

8 THE COURT: All right.

9 STEPHANIE AMADOR, having been duly sworn by the Clerk,
09:41AM 10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. LOPEZ:

13 Q. Good morning.

14 A. Good morning.

15 Q. Could you please state your name for the record?

16 A. Stephanie Amador.

17 Q. And can you spell your last name?

18 A. A-m-a-d-o-r.

19 Q. Directing your attention to the summer of 2017, did you
09:42AM 20 have a job that summer?

21 A. Yes, I did.

22 Q. And who did you work for?

23 A. Lawson & Weitzen.

24 Q. And what were you doing for Lawson & Weitzen?

25 A. I was reviewing discovery for a case. I speak Spanish,

1 and I was reviewing and helping to translate some of the
2 discovery.

3 Q. And to be -- full disclosure, you were working with me?

4 A. Yes.

5 Q. And over the course of the summer, approximately how many
6 hours of audio and video recording did you listen to?

7 A. It's hard to tell. I was working from about April till
8 the end of August, at least 40 hours listening to audios and
9 videotapes.

09:43AM 10 Q. So, fair to say hundreds of hours of audios and
11 videotapes?

12 MR. POHL: Objection.

13 THE COURT: Overruled.

14 A. Yes.

15 Q. And during that time, did you become familiar with the
16 voices of the individuals on the videotapes?

17 A. Yes, I did.

18 Q. And audiotapes?

19 A. Yes.

09:43AM 20 Q. And just to be clear, videotapes and audiotapes in this
21 case, correct?

22 A. Yes.

23 Q. Now, did I ask you to do something on Sunday?

24 A. Yes.

25 Q. What did I ask you to do?

1 A. To review an audio and video recording and to review who
2 was speaking on that.

3 Q. And was it a particular date that I asked you to review?

4 A. Yes, I believe it was January 8, 2016.

5 Q. And specifically the government's excerpt of that
6 particular recording?

7 A. Yes.

8 Q. And were you familiar with the people speaking on that
9 video or audiotape?

09:44AM 10 A. Yes.

11 Q. And you became familiar based on your prior review?

12 A. Yes.

13 Q. And did you identify any errors in the identification of
14 the speakers on that videotape?

15 A. I did.

16 MR. LOPEZ: Your Honor, I'd like to show the witness
17 an exhibit.

18 THE COURT: All right.

19 THE CLERK: Document camera.

09:44AM 20 Q. I show you the transcript.

21 A. Yes.

22 Q. And going to page 5, do you see on the bottom of that
23 page?

24 A. Yes.

25 Q. The original transcript had the name Playa?

1 A. Yes.

2 Q. And who did you believe in your opinion the speaker was?

3 A. Caballo.

4 Q. And on the next page, do you see the corrections you made
5 on the next page?

6 A. Yes.

7 Q. And was that throughout the transcript that you made those
8 corrections?

9 A. Yes, I did.

09:45AM 10 Q. And that was based on your familiarity with the speakers?

11 A. Correct.

12 MR. LOPEZ: Your Honor, at this point in time I'd like
13 to introduce this as Exhibit 31A.

14 THE COURT: Let's not make numbers and letters, how
15 about --

16 MR. LOPEZ: This is the government's Exhibit 31, so
17 31.1 perhaps.

18 THE COURT: Let's call it 31.1.

19 (Exhibit No. 31.1 received into evidence.)

09:46AM 20 THE COURT: Ladies and gentlemen, let me again remind
21 you these are English language translations of Spanish language
22 recordings. They've been translated for your ease of
23 understanding. You'll recall I permitted the government to
24 give you transcripts that had the speakers identified. This is
25 now a defense. Their contentions as to the correct speakers

1 and what they say are the correct speakers are indicated on the
2 transcript. Go ahead, Mr. Lopez.

3 Q. And just going through this, the jury can review it, but
4 there were -- you made changes on page 5?

5 A. Yes.

6 Q. Page 6?

7 A. Yes.

8 Q. Page 7?

9 A. Yes.

09:46AM 10 Q. Page 8?

11 A. Yes.

12 Q. Page 9?

13 A. Yes.

14 Q. Page 10?

15 A. Yes.

16 Q. Page 11?

17 A. Yes.

18 Q. And so on?

19 A. Yes.

09:47AM 20 Q. And in your opinion the identities of the speakers that
21 you've identified are, in fact, those speakers?

22 A. Yes.

23 Q. Now, I also asked you to listen to another tape. Do you
24 remember that?

25 A. Yes.

1 MR. LOPEZ: Your Honor this is a brief tape, if I
2 could just play it.

3 (Video played.)

4 THE COURT: Anyway, the tape is in Spanish?

5 MR. LOPEZ: Yes, that's correct.

6 Q. Well, in any event, did you recognize the voice on that
7 tape?

8 A. Yes.

9 Q. And did you prepare a translation?

09:48AM 10 A. I did.

11 Q. And --

12 MR. LOPEZ: For the witness only.

13 Q. I show you what's been marked as Exhibit 242.

14 A. Yes.

15 Q. Do you recognize that?

16 A. I do.

17 Q. And that's a translation that you prepared?

18 A. Yes.

19 Q. Turning over to the second page, there's a speaker
09:49AM 20 identified there?

21 A. Yes.

22 Q. And that is Muerto?

23 A. Correct.

24 MR. POHL: Objection.

25 THE COURT: Well, before you get into the content

1 let's admit it. All right.

2 Q. And there's other speakers?

3 A. Correct.

4 Q. And you recognize those speakers from your familiarity
5 with listening to their voices, correct?

6 A. Yes, I did.

7 MR. LOPEZ: Your Honor, at this point I would move to
8 admit Exhibit 242.

9 THE COURT: All right. I'm going to admit it for a
09:49AM 10 limited purpose. I will admit it, ladies and gentlemen, for
11 the purpose of whatever weight you choose to assign it in
12 determining the credibility of the witness identified as
13 Muerto. In other words, as I understand, the defendant is
14 offering this to impeach Muerto and to say that he was not
15 credible. You may consider it for that purpose and no other
16 purpose, and you may not consider it for the truth of anything
17 set forth in this excerpt, and my prior instructions concerning
18 the accuracy of the translations and so forth remains.

19 All right. With that, it's admitted.

09:50AM 20 (Exhibit No. 242 received into evidence.)

21 MR. LOPEZ: May I now read it to the jury?

22 THE COURT: Yes.

23 MR. LOPEZ: Muerto: "That's why I'm telling you,
24 dude, I would like that. That would be cool. You see it was
25 pretty when we went to do that thing to Playa that day and the

1 motherfucker seemed to be distrusting of me. Casper called me
2 and told me Playa wants to talk to you. Oh, really? Yeah.
3 There are some photos there, and it appears to you. I said oh,
4 really? Tell him to call me then, and I said what's up with
5 those photos? And he said oh, no, something there and the
6 motherfucker did not want to tell me anything else.

7 I said that's cool then, tell him to call me, and he
8 better not try to accuse me of things, because then you guys
9 will see what's up. No, man, he did not call me. Nothing has
09:51AM 10 been heard about that. We took that young kid, we gave him a
11 royal red hat, we gave him a spray so that he would go and put
12 the chavala 18 street sign, and he broke the glass from the
13 front windows, it was a huge rock. And that dude still lives
14 at that house down the street. Didn't he live in Revere?
15 Yeah, he lives in Revere."

16 No further questions, your Honor.

17 THE COURT: Cross.

18 CROSS-EXAMINATION

19 BY MR. POHL:

09:51AM 20 Q. Good morning.

21 A. Good morning.

22 Q. I'm Chris Pohl. I'm one of the prosecutors in the case.
23 I don't think you and I have met before. Are you a law student
24 still, or are you a practicing attorney now?

25 A. I'm a practicing attorney.

1 Q. Okay. You're not a linguist?

2 A. No.

3 Q. Okay. And your testimony, as I understand it, is that
4 when you worked in the summer for Mr. Lopez, he had you listen
5 to some of the recordings in this case; is that correct?

6 A. Correct.

7 Q. And so after the summer, I think you said about August,
8 you stopped this project, correct?

9 A. Correct.

09:52AM 10 Q. And as I understood your testimony on direct, you haven't
11 listened to anything else since then until this past Sunday?
12 Is that right?

13 A. Correct.

14 Q. And one of the things that Mr. Lopez had you listen to was
15 this recording that he just played of a couple different
16 people, who you say Muerto and Caballo and Pelon, or a person
17 we've called CW-1. Just so that we're clear, the date of this
18 recording, right, the recording was something that the
19 government produced to the defendants and that's one of the
09:53AM 20 things you listened to, right?

21 A. Correct.

22 Q. And the date was December 8, 2015, right? That was the
23 date of the recording?

24 A. I can't recall if it was January 8th or December 8th.

25 MR. POHL: Can I have it for the witness.

1 Q. It's not a trick question. That's the date on it. Does
2 that look right to you, December 8, 2015?

3 A. Yes.

4 Q. Okay. All right. So this recording was of a recording on
5 December 8, 2015, right?

6 A. Yes.

7 Q. Okay. Have you ever met Muerto?

8 A. No.

9 Q. Have you ever met Caballo?

09:53AM 10 A. No.

11 Q. Have you ever met Pelon?

12 A. No.

13 Q. Are you a linguist?

14 A. No.

15 Q. Okay. The last time you listened to any of these
16 recordings at all was the summer?

17 A. Yes.

18 Q. Until Mr. Lopez called you to come in on Sunday?

19 A. Well, we've been going through some of the information
09:53AM 20 over there --

21 Q. Not this one, right?

22 A. Correct.

23 Q. This one was Sunday?

24 A. Yes.

25 Q. And also just so I'm clear, this is an audio recording,

1 right? There's no people in this, right?

2 A. Yes, that's just an audio recording.

3 Q. So you'd have to know Muerto and Caballo and Pelon's voice
4 to be able to get this, right?

5 A. Yes.

6 Q. Okay. The last time you listened to any of these. I
7 mean, I understand you may have been talking to Mr. Lopez, but
8 the last time you listened to any of these was the summer,
9 right?

09:54AM 10 A. Yes.

11 Q. And even when you listened them, right -- let me ask you
12 this. When you listened to them, it was often the case that
13 many of the recordings at least back then didn't have
14 transcripts, right?

15 A. Correct.

16 Q. So you didn't know even from the government's perspective
17 who these people were that were talking?

18 A. I recognized their voices.

19 Q. You recognized Muerto and Caballo and Pelon and Casper and
09:54AM 20 Playa?

21 A. I did.

22 Q. Well, Playa, I get. I mean, is it fair to say that the
23 only person in this case that you met personally would be
24 Playa?

25 A. Yes.

1 Q. Okay. And on Sunday when Mr. Lopez had you come into his
2 office, one of the things that you reviewed was the -- I guess
3 what we've been calling the jump-in video from January 8, 2016.
4 And that was one of the videos you reviewed over the summer,
5 right?

6 A. Correct.

7 Q. But you didn't produce a transcript of that then, right?

8 A. No.

9 Q. And the recordings really long. Would you agree with me
09:55AM 10 about that?

11 A. Yes.

12 Q. It's like an hour and a half?

13 A. Yes.

14 Q. And you know, we've produced an excerpt here, but the full
15 transcript of everything that gets said in that recording runs
16 for like 70 or 80 pages. Would you agree with me about that?

17 A. I didn't -- yes.

18 Q. Okay. All right. And would you agree with me that it's
19 hard to tell who's speaking sometimes in that recording?

09:55AM 20 A. At times, it is, yes.

21 Q. Yeah. A lot of times there's a video recorder on CW-1,
22 right?

23 A. Yes.

24 Q. And it moves up and down, it captures people speaking, but
25 you can't always see them speaking when they are speaking.

1 Would you agree with me about that?

2 A. That's correct.

3 Q. And would you agree with me that there are times when many
4 people are speaking at once?

5 A. Correct.

6 Q. All right. And it's your testimony that on Sunday, you
7 had the opportunity to review that full recording, right, and
8 that you were able to make these changes on the fly and produce
9 this transcript?

09:56AM 10 MR. LOPEZ: Objection. Argumentative.

11 THE COURT: I'll sustain it in that form.

12 Q. It's your testimony that you were able, in a day, to
13 review that hour and a half long transcript with all of those
14 people talking and make the changes that you've made here
15 today? Is that really your testimony?

16 A. Yes.

17 Q. Well, let me ask you this. Did anybody help you make
18 those changes?

19 A. No.

09:56AM 20 Q. Did Mr. Guzman suggest to you what those changes should
21 be?

22 A. No, he had --

23 Q. Did Mr. Lopez tell you --

24 THE COURT: Hold on.

25 Q. Did Mr. Guzman -- did you have an understanding from

1 Mr. Lopez where to look on this transcript?

2 A. He told me where to start looking.

3 Q. Right. He told you where to look, right?

4 A. Yes, in terms of the time stamp.

5 Q. And even then, right, even then when Mr. Lopez told you
6 where to look and you changed some of the things in the
7 transcript, there's an awful lot in this transcript where even
8 you have Mr. Guzman speaking, right?

9 A. Correct.

09:57AM 10 Q. Like the very end. For instance, page 24, where you have
11 Mr. Guzman, Playa, actually doing the counting of beating in
12 Animal into MS-13; is that correct?

13 A. I did not type that. That was provided already.

14 Q. Well, I don't understand what that means. Does that mean
15 it's right or it's not right?

16 A. I believe that that's correct.

17 Q. Well, how do you know if it's right or not right?

18 A. Just based on listening to the audios.

19 Q. So which ones -- well, if you didn't confirm the whole
09:58AM 20 transcript, then what did you do?

21 MR. LOPEZ: Objection, your Honor. That's not what
22 she testified.

23 THE COURT: Sustained.

24 Q. So even in this transcript, the one that was printed --
25 that was reviewed by you, right, you have Playa counting "1, 2,

1 3, hold him, 3, 4, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13," right?

2 A. Correct.

3 Q. And then right after that someone says, "Welcome to
4 La Mara," right?

5 A. Correct.

6 THE COURT: Anything else?

7 MR. POHL: No, thank you.

8 THE COURT: Any redirect?

9 MR. LOPEZ: No, your Honor.

09:59AM 10 THE COURT: All right. Thank you. You may step down.
11 Is there any other evidence?

12 MR. LOPEZ: Your Honor, I just have some other records
13 to submit that I've had premarked. Exhibit 236, which is a
14 declaration from the custodian of the Massachusetts Registry of
15 Motor Vehicles detailing the cars that Mr. Guzman had
16 registered; a second declaration wherein a search was done by
17 the Registry of Motor Vehicles, and they could not locate any
18 Toyota registered in his name; a declaration of the custodian
19 of his employer with various W-2s for year -- for years 2012
10:00AM 20 through 2016; a certified copy of a quitclaim deed for
21 44 Barrett Street in Revere and a quitclaim deed certified
22 record for 15 Pratt Street in Revere. I move that they be
23 admitted, your Honor.

24 THE COURT: All right. They're admitted. So 236 and
25 237 are RMV records, right?

1 MR. LOPEZ: Yes, your Honor.

2 THE COURT: 238 is the W-2s?

3 MR. LOPEZ: Yes, your Honor.

4 THE COURT: And 239 and 240 are the deeds?

5 MR. LOPEZ: Yes, 239 and 240 are the -- yes, the
6 quitclaim deeds.

7 THE COURT: All right. They're admitted.

8 (Exhibit Nos. 236 through 240 received into evidence.)

9 Anything else, Mr. Lopez?

10:00AM 10 MR. LOPEZ: No, your Honor. Mr. Guzman rests.

11 THE COURT: Mr. Murphy.

12 MR. MURPHY: Can we approach sidebar, your Honor?

13 THE COURT: Yes.

14 (THE FOLLOWING OCCURRED AT SIDEBAR:)

15 MR. MURPHY: Your Honor, I'd be happy to make a record
16 at length outside the presence of the jury at a later time, but
17 I've read the redacted Threat Assessment. Number 1, I would
18 note that it is heavily redacted. Number 2, the parts that are
19 not redacted too clearly appear to be written by Special Agent
10:01AM 20 Wood based on the similarity between his language and his
21 testimony. Number 3, contrary to what Special Agent Wood
22 testified, there does not appear based on the unredacted
23 portions that I've read this morning to be any disclosure to
24 the authorities that this was submitted to about CW-1's crimes,
25 so I do think that this would have, if it was available at the

1 time of Special Agent Wood's testimony, have served as useful
2 cross-examination of him, so I'm about to rest, but I would
3 simply put on the record my objection of the failure of the
4 government to produce this as *Jencks*.

5 THE COURT: Well, in terms of the timing of it, as
6 *Jencks* material, if it is *Jencks* material, it's producible
7 after he testifies on direct. I was provided a copy in camera,
8 and the topic sort of didn't come up again, and then it came up
9 again on Friday, and I ordered it to be produced under seal,
10:02AM 10 which I understand didn't happen, but in terms of the relevance
11 of it, which I think is the real issue here, to the extent that
12 it's impeachment material for CW-1, I don't see how it's
13 particularly admissible since he wasn't testifying as a
14 witness, and the impeachment of the agent, you know, as to
15 whether or not CW-1 committed crimes he didn't know about, to
16 the extent it's relevant, certainly there was a lot of evidence
17 to that effect.

18 MR. MURPHY: Your Honor, just to make the record
19 perhaps slightly clear, from my perspective, my memory is that
10:03AM 20 the agent testified in response to a question from Mr. Iovieno
21 that he filed an amended Threat Assessment that disclosed
22 CW-1's crimes.

23 This, at least, this version, at least the unredacted
24 portions do not, so I think it would be clearly impeachment
25 evidence of Special Agent Wood as to his credibility when he

1 says he did something, and at least according to this document,
2 he didn't.

3 THE COURT: Is there an amended Threat Assessment,
4 Mr. Pohl?

5 MR. POHL: Judge, this is what I got from Washington.

6 THE COURT: All right. Mr. Murphy, do you want a
7 continuance? What relief do you want here?

8 MR. MURPHY: I would simply like the Court to -- I
9 mean, I think that this is -- given the heavy redactions here
10:04AM 10 and not knowing whether there is such a thing as a Threat
11 Assessment, given where we are in the trial, I do not seek a
12 continuance, but I simply want to register my objection before
13 resting to the government's failure to produce that as *Jencks*
14 material --

15 MR. IOVIENO: I join that objection.

16 MR. MURPHY: -- after Special Agent Wood testified and
17 after our specific requests.

18 THE COURT: That objection is overruled. Is there any
19 additional evidence?

10:04AM 20 MR. MURPHY: No.

21 MR. IOVIENO: No, your Honor.

22 MR. MURPHY: May this be marked somehow?

23 THE COURT: Yes, that was my copy, which I guess I
24 don't need anymore.

25 MR. POHL: I'm happy to get another copy to mark it at

1 one of the breaks.

2 THE COURT: Does it need to be filed under seal?

3 MR. POHL: Probably.

4 THE COURT: And we'll give it the next number,
5 whatever it is, G or H.

6 THE COURT: All right. Let me first off make my final
7 *Petroziello* finding, which is --

8 MR. POHL: Thank you.

9 THE COURT: As to those statements identified by the
10:05AM 10 government in its two *Petroziello* filings pretrial, to the
11 extent they were admitted at the trial, I do find that they
12 satisfy the requirements of Rule 801(d)(2)(e), that is, that
13 they were statements made in furtherance of the conspiracy, and
14 admit them as a final matter.

15 And then are there other motions for a directed
16 judgment of acquittal?

17 MR. IOVIENO: Yes, your Honor, just for the record to
18 make it clear, the defendants objected to the *Petroziello*
19 finding at the close of all the evidence.

10:05AM 20 THE COURT: Yes.

21 MR. LOPEZ: Yes, for all of us.

22 MR. IOVIENO: I would renew my motion for Rule 29 as
23 to both counts with respect to Mr. Larios.

24 THE COURT: All right. All four defendants are deemed
25 to have renewed their motions under Rule 29, and those motions

1 are denied.

2 Okay. Do we need a break before closing?

3 MR. POHL: Maybe five, ten minutes to set up the
4 equipment and test everything to make sure we're ready. Is
5 that all right?

6 THE COURT: Yes.

7 MR POHL: Thank you.

8 (SIDEBAR CONFERENCE WAS CONCLUDED)

9 THE COURT: Ladies and gentlemen, the evidence is now
10:06AM 10 closed. We're going to proceed closing arguments. The
11 government suggested a five-minute break to set up the
12 electronic equipment to make sure it's working, and why don't
13 we do that, and as soon as everything is ready to go, which
14 will either be in five minutes or not at all, we'll reconvene
15 and get started.

16 THE CLERK: All rise.

17 (JURORS EXITED THE COURTROOM.)

18 (A recess was taken.)

19 THE CLERK: All rise.

10:14AM 20 (A recess was taken.)

21 THE COURT: All rise for the jury.

22 (JURORS ENTERED THE COURTROOM.)

23 THE CLERK: Thank you. You may be seated. Court is
24 now back in session.

25 THE COURT: All right. Are we ready?

1 MR. POHL: Yes, your Honor.

2 THE COURT: Mr. Pohl.

3 CLOSING ARGUMENT

4 MR. POHL: Your Honor, counsel, ladies and gentlemen,
5 good morning. On the evening of January 8, 2016,
6 Herzzon Sandoval, "Casper," Edwin Guzman, "Playa,"
7 Cesar Martinez, "Checha," and Erick Argueta Larios, "Lobo," and
8 other members of MS-13's Eastside Loco Salvatrucha gathered at
9 their home base, the garage in Everett. It was an important
10:18AM 10 day. It was a day that the clique jumped in Joel Martinez,
11 "Animal," and made him a homeboy or full member of MS-13.

12 Why did Casper and Playa and Lobo and Checha and the
13 other members of MS-13 want Animal jumped into MS-13? After
14 three weeks of this trial, after hearing from agents and
15 cooperating defendants who are themselves members of MS-13 and
16 reviewing transcripts and receiving over 100 exhibits and
17 photographs, you know the answer to that question.

18 You know what MS-13 is, you know why it exists, and
19 you know what its mission is, and you know what its goals are.
10:19AM 20 You know that from Jose Hernandez Miguel.

21 In MS, all there is is violence. There's nothing
22 else. You learn violence in MS-13 because he was an MS-13 and
23 that's what MS-13 does, they bring you in for violence, and you
24 have to be in committing violence.

25 When you join MS-13, you know what it is that you're

1 joining, and what did Casper discuss about that, that when one
2 is jumped into MS-13, one is aware that one is jumped in to
3 kill or look for chavalas. That's the main mission of MS-13,
4 to kill chavalas.

5 And finally you understand once you're jumped in what
6 it is that MS-13 directs its members to do because that's the
7 mission of the dudes of MS, which is to kill or stab rival
8 members. Why? Why is that the mission? Because MS want to be
9 the only one. It doesn't want any rivals. It wants to control
10 everything.

10:20AM

11 That's what you learned during the course of this
12 trial, ladies and gentlemen. That's what these defendants did.
13 To understand the significance of what Casper and Playa and
14 Lobo and Checha did that night when they jumped Animal in, you
15 need to go back to the murder on September 20, 2015 of
16 Irvin De Paz on Trenton Street in East Boston.

17 Now, it was at the very beginning of the trial. You
18 saw what that neighborhood looked like. You saw when that
19 murder happened. You saw that it was house next to house, next
20 to house, next to small business, next to house.

10:21AM

21 There was people, cars. When did the murder happen?
22 It was 5:00 in the afternoon in September. It was broad
23 daylight. You could not have picked a more public place or a
24 more public time to do a murder if you tried.

25 And on that day, Animal and other MS-13 paros were out

1 hunting 18th Street or chavalas, and they saw Irvin De Paz
2 wearing a red T-shirt and hunted him down on Trenton Street.
3 They chased him down on Trenton Street. He goes out of view of
4 the camera. A few seconds later, you see Animal and the other
5 man jogging back, wiping the knife off. And you know what
6 happened with that knife, you saw the blood at the crime scene,
7 and you saw what Animal did to Irvin De Paz, and you know what
8 Animal had done in broad daylight on Trenton Street.

9 (Video played.)

10:22AM 10 Within a few weeks of that incident, the FBI, using
11 CW-1, was able to get a recording of Animal in CW-1's car, and
12 you heard what Animal said and what Animal did that day. You
13 heard and saw the transcript, and you'll have an opportunity to
14 review that during your deliberations.

15 There's two things that you remember from the video
16 that you don't need the transcript for. You remember Animal
17 with a sort of eerie proud calm in his voice talking about how
18 he thrust the knife into the back of Irvin De Paz.

19 (Video played.)

10:23AM 20 And you also heard and saw the hand sign that
21 Irvin De Paz flashed as he got out of the car. It's a hand
22 sign that you've become very familiar with during the course of
23 this trial, the M for MS-13.

24 (Video played.)

25 Jump ahead two months to December 6, 2015, right. A

1 recording with Casper, right. The call is in Spanish. We
2 played it for you. I think that's probably the only other time
3 aside from the Animal video that you just saw that the Spanish
4 recording was played for you, and you may have wondered why.

5 You know, ladies and gentlemen, there's been a lot of
6 transcripts in this case, and you can get an opportunity to
7 read them during your deliberations, but you can tell an awful
8 lot about -- even if you don't understand literally the words
9 that are being said, you can tell an awful lot about the tone,
10:24AM 10 about what is being in the conversation just by the tones of
11 the voice and the manner of exchange between the parties. And
12 without even understanding the words as they're being spoken to
13 you, you learned a lot just by listening to that call.

14 You heard Animal essentially talking to Casper and
15 saying, "I'm from the barrio, I have heart, I want to be an
16 MS-13. I am having problems with my own clique, I want to join
17 your clique," right? I want to be part of the Eastside clique.
18 I want to follow you, and what does Casper say in response?
19 What did he say?

10:25AM 20 "Awesome, as I was explaining, homie, come by this
21 area, homie. You will meet all of us, you will. You will find
22 out how we think as a group, homie, and if your way of thinking
23 coordinates with ours, then it's great, then everything will be
24 solid and we will see what decisions we will make because it's
25 not only my decision, they all have to check you out, too, you

1 know."

2 And how does Casper finish the conversation? By
3 saying, "Look, Everett, Eastside, it's all the same barrio,
4 MS-13. The dude is going to the MS-13 barrio, homeboy, and we
5 belong to the MS-13."

6 Now, what do you learn from this conversation? You
7 know, remember a couple of things about this conversation.
8 Remember the age difference between Animal and between Casper,
9 right? There's a maturity difference, right? When you are
10:26AM 10 listening to this transcript and you're listening to this
11 recording, it almost sounds like Casper is like a college
12 recruiter, right, and he is in the living room of somebody that
13 he's trying to recruit to get into his school, right?

14 "Look, Animal, you have a lot of talent, we know all
15 about the murder that you did, but I know that you're being
16 wooed by the Everetts. There's been some sort of hard feelings
17 between you and them, but don't worry about a thing. We would
18 love to have you," right? "We, in Eastside, would love to have
19 you. You don't have to decide right away, this is a big
10:27AM 20 decision, we want you to come over, hang with the guys, make
21 sure that the guys get a chance to meet you, and when we do
22 that, we will see if we're all on the same page. We will make
23 sure that your way of thinking is coordinated with our way of
24 thinking. And then if it is, then there's no problem, you're
25 in with us."

1 Interestingly enough, the very end of that transcript,
2 Casper finishes off by saying words to the effect of, "The
3 Everetts, I don't care about the Everetts. That guy Animal is
4 coming into MS-13 with us, Eastside, and if the Everetts don't
5 like it, they can stuff it." They want Animal because they
6 like what Animal brings to the table, and what Animal brings to
7 the table is murder and the willingness to commit murder on
8 behalf of MS-13 and on behalf of the Eastside clique.

9 Muerto and Tigre told you Casper was the leader of the
10:27AM 10 MS-13 Eastside clique, and the recordings and the clique
11 meetings tell you that Casper was the leader, but you see in
12 this sort of exchange all the things that makes Casper the
13 leader of the clique. He's a thinker, he's a recruiter, he's a
14 decision-maker, he's a planner, he's a leader.

15 You can understand why he is the kind of person that
16 would end up running what Tigre described as the biggest MS-13
17 clique in Massachusetts. From the testimony at trial, you also
18 know what it means when Casper says, "We need to make sure that
19 your way of thinking is coordinated with our way of thinking,"
10:28AM 20 right?

21 On the watch of Eastside members, Animal commits two
22 more stabbings in 2015. He commits one with Tigre on
23 December 27, 2015. Again, it's in broad daylight. Tigre,
24 Animal and two young paros, Luis and David are out in Chelsea
25 looking for chavalas. They break into groups this time.

1 Sometimes during the testimony during the trial we've heard
2 that they break into groups and they're on opposite sides of
3 the street. And this one they ended up breaking into a group
4 but staying on the same side of the street, so as to not to
5 attract too much attention.

6 They see an 18th Street member, they chase him down,
7 he gets free, they chased him again, they beat him, kick him,
8 stab him. And I think Tigre, during his testimony, even made
9 sort of an upward thrusting motion during his testimony to
10 describe how the 18th Street member was stabbed.

11 Tigre used an interesting word to describe that attack
12 that day. He called it -- he said that Animal, David and Luis
13 were under observation, right? And you know from all the
14 evidence that you've heard at this trial, you know what that
15 means.

16 Tigre, who's a senior homeboy with the Eastside
17 clique, is there to watch how these guys do, right? How are
18 they going to react when they see an opportunity to attack
19 chavalas? His job was to report his findings back to the
20 clique and specifically to Casper to tell everybody how they
21 did, and I think Tigre in his testimony said, "Why did you do
22 that, why did you report back to Casper?" Tigre sort of
23 shrugged and gave this answer that may sound like the answer
24 was self-evident and obvious, and to you, after three weeks of
25 testimony, I think it is obvious. "One has to tell the things

1 that one does to one runners," right?

2 And so Tigre was there to watch and make sure to see
3 what these guys were all about and to make sure that they were
4 people that were worthy of joining Eastside and worthy of
5 joining their clique.

6 A couple days later, Animal does another one with
7 Brujo, right? There's a transcript, Exhibit 114, it will be in
8 your admitted binders. And, you know, Brujo -- Animal tells --
9 is recorded saying, "Brujo and I just did an awesome hit, dog.

10:30AM 10 We were making some soup here with the Mara family dog, talking
11 about celebrating, dog."

12 Brujo says, "I struck the son of a bitch with a
13 knife."

14 Animal says, "I captured him and set him up for him,
15 and then the homeboy lunged at him with a blade, dog, for
16 real."

17 Right?

18 So when Casper says we need to make sure that your way
19 of thinking is coordinated with our way of thinking, you know
10:31AM 20 what he means, right? You know what he means. He means we

21 needs to make sure that you want to go out and hunt for
22 chavalas and attack them, right? Animal did that. He did that
23 with Tigre, he did that with Brujo. They celebrated together
24 with the Mara family, and six days later, Casper and Playa and
25 Lobo and Checha jump Animal into the Eastside clique.

1 Now, you've seen the Animal jump-in video a couple
2 times during the trial. I'm not going to play it again during
3 closing arguments now, but you can certainly watch it during
4 your deliberations. I think you heard it first come from
5 Special Agent Wood, at the beginning of the case. It was a
6 shocking thing to see the first time, right, but it was a
7 little devoid of meaning because you hadn't had any real
8 testimony from any of the cooperating defendants or any of the
9 other transcripts to understand exactly what you were watching.

10:32AM 10 Then you saw it again through Muerto, and Muerto
11 described the significance of what it means to be jumped into
12 MS-13, how important that is to your rebirth as a gang member,
13 as a member of the organization.

14 And Muerto also says that on the day of the Animal
15 jump-in, he describes who does what, including the fact that
16 that man, Playa, Edwin Guzman, is the man who counts for 13
17 seconds as Animal gets jumped in and made a full homeboy
18 because of the murder and because of the hits that he did with
19 Tigre and with Brujo. But the full significance of the
10:32AM 20 jump-in, ladies and gentlemen, probably didn't come at the end
21 of the trial when you read excerpts of the transcript of the
22 meeting, right?

23 You know, transcripts are -- it's a hard way to
24 receive evidence, right? It's much easier to watch people
25 testify on the stand or to watch videos. And you got an

1 opportunity to read sort of parts of the transcript toward the
2 very end of the trial, but if you have any real question about
3 what happened that day and what these four men did that day and
4 how that event that day is a sign and signal of their
5 allegiance to MS-13, and during your deliberations take that
6 transcript out, it's Exhibit 31. Read it from beginning to
7 end, right? Read it together, right, because when you do that,
8 you will really understand what it is that that clique is doing
9 when they jump in and celebrate Animal as a new member of the
10:33AM 10 gang.

11 There are lots of things that are talked about
12 throughout the meeting, right, throughout the meeting, and the
13 meeting is a long time, the meeting goes a long time, but one
14 of the themes, right, that keep popping up from all the
15 different members: Today is the day we're going to jump Animal
16 in, right? We have to find a place for Animal to lay low. We
17 should keep him out of MS-13 turf because that's where the
18 people are most likely to find him. We have to hide this dude
19 so he won't be arrested. It is our priority that this dude not
10:34AM 20 be locked up.

21 When MS-13 members ask who did the murder on Trenton
22 Street, the clique tells Animal you should tell them that you
23 did it and you're a member of the Eastside clique. In other
24 words, when you're talking to other MS-13 members, all right,
25 that murder should be credited to us because MS-13 exists to

1 commit murders and attempted murders against its rivals and
2 when you jump in Animal, they want that credit for their own
3 clique for the organization, right. So when the clique members
4 say, when you are talking to other MS-13 guys, you claim us and
5 you claim credit for the murder, and I think Caballo even says
6 at one point, "And puff out your chest when you do it, puff out
7 your chest when you do it." That tells you everything you need
8 to know about this organization.

9 Puff our your chest when you tell them that you're the
10:34AM 10 one that hunted Irvin De Paz on Trenton Street and knifed him
11 to death, right, when you're talking to other people, though.
12 I think a lot of times in the transcript, they use the word
13 "civilians," which is telling. They use the word "civilians."
14 When you're talking to civilians, you don't have to tell them
15 anything. In fact, what you should do is blame the Everetts,
16 right, say they're the ones that did the murder. Casper even
17 says at one point, "It's to our advantage if you do that. It's
18 good for you and it's good for us."

19 One of the other themes during the meeting is in
10:35AM 20 addition to keeping you safe from the police, they talk about
21 the fact that they're going to square things away for the
22 Everett clique for him, right, so he can be safer in the
23 Eastside clique and not worry about having any other problems
24 with the cliques that he had formerly associated with.

25 Now, that's sort of the theme. Those are the themes

1 that are discussed throughout the recording. You'll see when
2 you read the full transcript, they pop up here, there, from
3 various different people, but the important thing is all four
4 of these men made a point of contributing something significant
5 to the conversation aside from the general themes and beginning
6 with Casper. Casper is at the clique meeting, at the jump in
7 of Animal, right?

8 They're all -- let's be clear. All four defendants
9 are at the jump-in meeting of Animal. They are all celebrating
10:36AM 10 the fact that Animal is bring made a member -- a full member or
11 homeboy with the clique. And what does Casper say when he's
12 talking to the group? "Look, no, look. I'm going to tell you
13 something, homie. We need the new generation of the Eastside,
14 homie. And thanks to the wisdom that we have gained over the
15 years, homie, we have to pass it along, dude, so that the new
16 Eastside clique can come and not think badly that we're going
17 to fuck them over, because, shit, we are Maras, and the fuckers
18 here will fuck it up, but what I am trying to say is you guys
19 are going to be the next generation."

10:36AM 20 Okay. That is what is happening here, right. You are
21 witnessing in this meeting something that happened in other
22 parts of the investigation, and it happened at the end. They
23 are adding new members to continue to grow and strengthen their
24 MS-13 enterprise, right? Animal is one, right. And understand
25 from the testimony of Tigre, there are two more on deck.

1 You've got Luis and David, Animal's friends, who are out doing
2 hits on chavalas in December of 2015. They're ready, they're
3 sort of in the pipeline getting ready to be approved.

4 All right. In addition to Casper, you've got Playa.
5 Playa is also at the clique meeting, right? What are the kinds
6 of things that Playa says during that clique meeting? We have
7 to help this guy look for a room, if we could hide him for at
8 least a month in this house, that would be awesome.

9 You know, Playa, however, is the accountant and
10:37AM 10 looking after the clique's finances says, look, we have to get
11 Animal money to hide him, but we also have to be careful that
12 some of the money that we set aside doesn't just go all to
13 Animal. We also have to make sure that we send it to
14 El Salvador, and Playa also recommends Animal to the clique.

15 This is one of the quotes that's in that passage.
16 "Look, I am quite relaxed here, dude." This is Playa talking
17 about Animal. "That dude has killed, dude, and, look, the
18 homie is taking it easy. A lot of people found out about the
19 murder that guy did, and I ran into the guy walking around and
10:38AM 20 he's all calm. Many of you know what I'm talking about,
21 right?"

22 Does that sound like somebody who is "calmado," to use
23 Mr. Lopez's phrase during the trial? Does that sound like
24 somebody who is not an active part of MS-13? Does that sound
25 like somebody who has sworn off and is not interested in

1 embracing what MS-13 is and what it is all about? No. No.

2 Guzman and Casper are ecstatic at the prospect of
3 having Animal jumped into the clique and of having other new
4 members jumped into the clique to grow and strengthen the
5 enterprise, and don't forget that Playa was the one, at the end
6 of the day, end of meeting, that actually jumped Animal into
7 the clique.

8 Who else was there? Lobo. What does Lobo do? Look,
9 I mean, you've heard enough of the clique meetings and the
10:39AM 10 clique transcripts to understand that there's sort of a
11 hierarchy in terms of the total amount of time that people
12 speak. Casper speaks a lot, Playa speaks some, and then
13 everybody else sort of chimes in throughout the transcripts,
14 and you'll see that in that transcript and some of the other
15 transcripts that you'll have during your deliberations.

16 Lobo is fully committed to make sure that Animal gets
17 to hide from the police and is not caught or brought to justice
18 for the murder. "There's a room right now in Chelsea for 500
19 bucks. I don't know if you guys are in agreement because I
10:39AM 20 know that girl, but I prefer not to tell her that this homie is
21 with the Mara, you know. It's with a lady I know, a friend of
22 mine, who is going to kick out an old guy. I'll go tomorrow if
23 you want. I don't work tomorrow. I'm not saying I can get it
24 for you for sure, but I'm telling you that I'm going to try,"
25 right? That's what Lobo says about finding Animal a room and

1 finding him a place to stay so that the police don't know where
2 to catch him.

3 Lobo even talks to Animal about how he's going to find
4 a job, right? He says, "How are you with garbage, bro? I'm in
5 the garbage business." Right? They are willing to do and say
6 and offer the kind of support to Animal to make sure that he is
7 not captured by the police and to make sure he can continue to
8 do the murders and attempted murders that the enterprise wants
9 you to do.

10:40AM 10 What about Brujo? Brujo tells the group about Animal.
11 "The homeboy did this thing with me twice in a short time. He
12 did it with me, and that is some serious shit, man." And he
13 compares Animal to some of the other guys that, you know,
14 people have talked about jumping in.

15 He's like, "Look, I don't know about some of these
16 other people, but the thing about Animal is I know he's the
17 real deal. I know what he's done, and before we jump somebody
18 into the clique, we need to make sure they're the real deal,
19 too. Let them come and kill, let them come and feel the
10:40AM 20 pressure. They need to stick the knife in and see what
21 happens. If you have love for the barrio, you will show your
22 balls there."

23 This is when Casper -- right after that is when Casper
24 launches into his speech about jumping in the next generation
25 of people into the Eastside clique.

1 And, finally, there's Checha who is also there. And
2 you know, Checha doesn't speak that much during the jump-in
3 meeting. I think the only things you need to remember about
4 Checha are, Number 1, everybody -- the whole meeting is about
5 the Animal jump-in. Everybody knows why they're there and
6 everybody participates in the celebration at the end, right?
7 So there's no mystery about what is happening here.

8 And you know, Mr. Norkunas, I think, offered a portion
9 of the transcript that we didn't. The portion of the
10:41AM 10 transcript for Mr. Norkunas just says that Checha has somebody
11 else in mind that he'd like to jump in first before they jump
12 in Animal, right? It's hardly like Checha stormed out of the
13 meeting in protest, right? Checha is there with Lobo and Playa
14 and Casper and all the other members of the Eastside clique
15 eagerly approving of Animal as another member of the Eastside
16 clique.

17 And all of this illustrates, ladies and gentlemen, the
18 essential reason why criminal conspiracies are so dangerous,
19 right, and that's all this case is. You're going to hear a lot
10:42AM 20 about the Judge's instructions at the end of the case, about
21 racketeering conspiracy, conspiracy to distribute narcotics.
22 All this case is in a conspiracy, and when people ban together
23 in criminal conspiracies like the kind that was charged here,
24 the threat of harm is magnified.

25 All right. When one person, Animal, does a murder,

1 he's one person, he's on his own, but when Casper and Playa and
2 Lobo and Checha and Muerto and Brujo and all of the other
3 members of the Eastside clique get together and agree, Animal,
4 we will help you, we will make sure you don't get caught by the
5 police, we will give you money, we will try to get you a job,
6 we will give you a place to stay, we will square things with
7 the Everetts so there's no problem with them, when you do that
8 it provides the Animals of the world with the support
9 structure. It makes it safer for them to plan their crimes, it
10:43AM 10 makes it easier for them to actually commit their crimes, and
11 it makes it easier for them to escape justice for their crimes.

12 That, ladies and gentlemen, is basically the reason
13 that MS-13 exists, to help its members commit murders against
14 its rival and to evade responsibility for those murders. That
15 is what Casper and Playa and Lobo and the rest of Eastside is
16 celebrating when they jump Animal in.

17 The fact that MS-13 -- excuse me, the fact that the
18 FBI succeeded in placing a cooperating witness into MS-13 is
19 remarkable, and the fact that you were able to see the secret
10:43AM 20 initiation ceremony for Animal is remarkable, but what you know
21 from all of the other evidence at trial is that as far as the
22 Eastside clique was concerned, the Trenton Street murder is not
23 unique, right, the clique has committed acts of violence on a
24 routine basis for years. How do you know that? Through the
25 testimony of Muerto and Tigre.

1 Both men described how they were recruited in MS-13,
2 both men described how Casper and Playa welcomed them into the
3 Eastside clique, both described in very similar ways the
4 mission of MS-13 to kill chavalas. Both described how they
5 were taught what it means to be in MS-13 and both described
6 Eastside clique meetings where the MS-13 business was discussed
7 and both described attacks that they committed on behalf of the
8 MS-13 enterprise.

9 Let's start with Muerto. It's a familiar story by
10 this point, born in El Salvador, coyote brings him to the
11 United States, ends up being, you know, meeting MS-13 members
12 in high school, hanging around with them, what Tigre would call
13 observation, being -- eventually committing significant acts of
14 violence, a stabbing, and being jumped into a clique in
15 California.

16 When he travels to Boston, his clique member in
17 California introduces him to Casper who even then, right, in
18 2004, right, which was the first time that Muerto comes to
19 Boston, even then, Casper introduces him as the runner of the
20 Eastside clique, and as Casper -- as Muerto comes back and
21 forth, he meets the other side of the Eastside clique finally
22 settling here in 2007, and the point of mentioning that, ladies
23 and gentlemen, is just to remind you that Muerto 's association
24 with these people is not some passing thing, right, it's not
25 some fleeting introduction, it's not a distant friendship, it

1 is a sustained regular contact over more than a decade, right?

2 Muerto told you he knows who these defendants are,
3 that they have been in MS-13 for as long as he's known them,
4 right, and that in many instances they have marked their own
5 bodies, they have marked their own bodies to show their
6 commitment and allegiance to the gang.

7 For instance, Muerto identified Casper's tattoos, MS
8 and ESLS, right? He identified Playa's tattoos, MS-13. He
9 identified Brujo's tattoo, ESLS. And after everything that
10:46AM 10 you've heard during the course of this trial, ladies and
11 gentlemen, what person would dare mark their body with an MS-13
12 tattoo who is not fully committed to the mission of MS-13 and
13 the goals of the enterprise? Who would dare do that?

14 As Tigre told you in his testimony, not just anybody
15 can get an MS-13 tattoo. The person Muerto had known the
16 shortest time was Lobo. I think he said he met him in 2013,
17 and he had still known him for years, as well, and said he hung
18 out with him all the time.

19 And one of the things that you have heard as
10:46AM 20 testimony, not that Lobo has a tattoo, but you had him captured
21 flashing the MS-13 sign in the photograph. How does Muerto
22 describe the Eastside clique then when he first settles into
23 Boston, pretty much the same way as it was in 2016 right around
24 the time that the FBI charged the defendants in this case.

25 Playa and Muerto are in a car, an SUV, in 2008 in East

1 Boston. Muerto sees a chavala wearing red walking down the
2 street in East Boston, Playa pulls over, and Muerto gets out
3 and chases the chavala, right, and so does Playa. And what did
4 Muerto say when that happened? "I got out of the car, and I
5 chased the chavala and I yelled at him, 'What's up? This is
6 Mara Salvatrucha.' So when the guy heard that, he tried to run
7 away under the bridges, and I chased him until I caught him,
8 and I smashed his face with the bottle. He was on the floor
9 when Playa came and he also had a beer bottle, and he also
10:47AM 10 smashed it in the face, and we started kicking the guy, and the
11 guy was just trembling there. So then we ran back to the car,
12 we went to Revere."

13 "Did you see the man on the ground after you and Playa
14 had smashed his face with beer bottles?"

15 "Yeah."

16 "What did he look like?"

17 "He was all bloody, he was covered in blood. I just
18 saw the guy shaking."

19 Another day, later on after that, another attempted
10:48AM 20 murder in Maverick Square. Muerto is with several other MS-13
21 gang members. He's at Checha's house having a barbecue. They
22 get a call, there's some chavalas on a bus near the Maverick
23 Square T-station, and they all go there, right? They go
24 looking for the chavalas, the guy that they're initially
25 looking for don't get off the bus, but they're walking down the

1 street, I think separated on opposite sides of the street, and
2 they see another 18th Street gang member.

3 And what do they do? They chase after him, they
4 tackle him, they assault him, they kick him. Muerto has got a
5 baseball bat, Checha has got a machete, right? And basically
6 the only thing that stops them from killing the guy is that
7 there's a taxi driver that starts honking the horn. They run
8 back to Checha's house, they wait for the police presence to
9 die down. And when Muerto wants to get out of East Boston, who
10:49AM 10 does he call? He calls Playa, right? Even then, even back in
11 2008, he calls Playa. Playa sends a cab, he picks him up at a
12 car wash in Chelsea, and Playa takes him home.

13 Now, it's true that there aren't any audio or video
14 recording of those incidents, right, in 2008? The FBI
15 investigation was years away from beginning, right? You don't
16 have any transcripts of those incidents the way that you have
17 in some of the other murders and attempted murders that you
18 heard testimony of during the trial, but after three weeks of
19 this trial, you recognize those incidents as quintessential
10:49AM 20 MS-13 hits, just like the ones that the FBI did record in 2014
21 and 2015.

22 I think in Mr. Norkunas' cross-examining Muerto, and
23 he has sort of tone of incredulity in his voice, he was like,
24 you know, Muerto, do you mean to tell me that you and your
25 MS-13 associates are just out in Maverick Square in East

1 Boston, one of the biggest, busiest parts of East Boston where
2 the train station is, and you're just walking down the street
3 and the next thing you know, you attack an 18th Street gang
4 member with a baseball bat and a machete. Is that really what
5 you mean to tell me? And here's the thing, after the three
6 weeks of this trial, you know exactly what that sounds like.

7 All right. There's nothing about that that's
8 surprising in the least, right, at all? In fact, not only is
9 it not surprising for these guys, it's routine, right? You
10:50AM 10 know, this sounds exactly like what Tigre described he did
11 right before the take down with David and Animal and Luis,
12 right? They're out walking down the street, they divide up
13 into groups, so as not to draw too much attention. They see a
14 chavala, they hunt him down, they kick him, they punch him,
15 they stab him.

16 And what does Tigre say at the end of that? "We would
17 have finished the guy off, but there was too many people around
18 when we left, so we took off, but, I mean, when we took off,
19 that guy was in really bad shape," right? That is
10:51AM 20 corroborated, right, but it sounds like exactly what they
21 talked about in 2008.

22 There's no difference, right? The same thing -- do
23 you know what else it sounds like, besides the one that Tigre
24 described in the stabbing in Chelsea, it sounds like Trenton
25 Street, right?

1 Do you remember the video from Trenton Street? There
2 are guys running down the street after the victim. One on one
3 side of the street, one on the other side of the street, De Paz
4 gets stabbed right out of camera view. A few moments later,
5 the two men that did the stabbing jog back, right?

6 This clique has been doing this for years, right, and
7 you have confidence in what -- in the testimony that you heard
8 because it is so similar to all of the other evidence that you
9 got during the FBI investigation. Muerto and Tigre helped you
10:52AM 10 understand MS-13 as an organization. Muerto and Tigre both
11 told you that Eastside met regularly, and it met whenever the
12 runners, Casper and Playa, wanted to call a meeting, right? At
13 the meetings, the first order of business was to collect money
14 for the members. The person who collected that money was
15 Playa, the second in command.

16 Why Playa? As Tigre said, the person who collected
17 the money had to be trusted and was serious. What was that
18 money for? Muerto and Tigre told you, the money went to help
19 MS-13 members that were incarcerated here in the United States.
10:52AM 20 It went to help MS-13 members that were incarcerated in
21 El Salvador, it went to help the families of incarcerated MS-13
22 members. The money also went for clique guns, right, like
23 this. This is one of the clique guns that you heard testimony
24 about during the trial. The Lobo gun, right? Let's talk about
25 the -- Lobo's clique gun, as an example.

1 First, let's remember how the gun got to Lobo in the
2 first place, right? Initially, Tigre says this is my gun,
3 right, I had it, I was drunk, I was waving it around, flashing
4 it, not giving it the proper respect, endangering my fellow
5 clique members, right? And what happens, Casper took it away
6 from him.

7 Also, interestingly, Casper didn't take it away from
8 him without compensating him for it. Casper used clique money
9 to pay Tigre to give the gun because this was not coming --
10:53AM 10 this was going from Tigre's personal gun to becoming a clique
11 gun, and Casper then gave the gun to Lobo.

12 Why did he give the gun to Lobo? Why would the fact
13 that shots were fired at Lobo result in Lobo getting a gun?
14 Because if he had been shot at once, it could happen again, and
15 if he had a gun, then he could also shoot, right?

16 The guns that were presented in this trial, ladies and
17 gentlemen, are a sign and signal of MS-13's purpose. As you
18 know from Muerto and Tigre, the clique weapons and the clique
19 ammunition are to be used by clique members to attack chavalas
10:54AM 20 and to defend rival cliques members against attacks. That's
21 why the topic of clique guns came up so much during the clique
22 meetings, right? They're important, right? It's regularly
23 discussed, we got to make sure that we get our clique gun.

24 Sometimes it's discussed in connection with other
25 competing priorities. We got to bring some guy back from

1 El Salvador, but remember we also got to buy a clique gun.
2 That's important, too. Lobo wanted the gun both for
3 self-defense and to be able to use it in an attack if the
4 opportunity presented itself.

5 And when Checha -- according to Muerto, when Checha
6 saw chavalas that he wanted to shoot at, he calls Muerto, he
7 picked up clique ammunition from Muerto's house, and he's got
8 the guns and ammunition, and he goes off to do it.

9 The money also went to help pay for -- to bring MS-13
10:54AM 10 members who had been deported back from El Salvador to the
11 United States. Muerto called this an obligation, right? It's
12 if one of these homeboys is deported back to El Salvador, the
13 clique is obliged to bring him back, and, indeed, when Muerto
14 was deported in 2009, he had contact with the Eastside homeboys
15 when he was in El Salvador, and they helped pay the coyote to
16 bring him back.

17 Muerto describes how he had made it to the Mexican
18 border, needed extra money to get across to pay the coyote to
19 get across. He called his sister. There's a three-way call
10:55AM 20 between his sister and Playa and himself, right? The amount of
21 money is discussed. The next thing that happens is Playa gives
22 the money to the sister, and the sister wires the money to the
23 coyote for Muerto to be able to go across, right?

24 Based on the testimony that you've heard, you know
25 that MS-13 essentially makes a kind of bargain with its

1 members. When you kill our rivals, we will support you, right?
2 And every time the Eastside clique met and circled up in that
3 garage and every time Playa went down the line and collected
4 \$30 from this guy and \$30 from this guy and counted how much
5 was owed and counted out what you owed from the last meeting
6 that you still haven't paid yet, every time he does that, that
7 money went to protect, to maintain, to defend, and to grow the
8 MS-13 enterprise, right?

9 Every time Playa sent one of the Eastside members,
10 including on several occasions Checha, right, to like a Western
11 Union or a MoneyGram to send that money to El Salvador, the
12 clique was doing its part to ensure that the MS-13 enterprise
13 continued to thrive. And,.

14 Of course, at the end of every MS-13 meeting when gang
15 business is discussed, when money is received, when people are
16 disciplined, when reports of attacks have been reviewed, all
17 the meetings end in the same way.

18 (Video played.)

19 That is the way that all of the members of the clique
20 reaffirm that they understand why they are at the garage, why
21 they belong to MS-13, and why they support MS-13's mission.

22 So to be considered for membership in MS-13, you have
23 to commit an act of violence. When you join MS-13, Muerto and
24 Tigre make it perfectly clear, you are fully aware that you are
25 committing yourself to a life of violence. When you become a

1 member, you are beaten for 13 seconds, another act of violence,
2 and when you violate the rules of MS-13, you are, to use
3 Tigre's word, "corrected," and those corrections are not
4 gentle.

5 Tigre told you about the beating that the clique
6 administered to him because of his continued drinking and for
7 Master of not reporting to the clique meetings. What does
8 Casper say about that?

9 Casper: "This dude is getting a beating, too. We had
10:58AM 10 ordered him to be on the wagon, and he failed, as you all know.
11 So I don't know what decisions you will make after you give
12 this dude the beating, if you will continue the same or what,
13 but that will be decided after the beating. We will talk about
14 that subject because I will go over point by point, you know.
15 Master, you also have a beating, dude. The dudes sentenced you
16 that for disappearing. A fucking lot of time that we hadn't
17 heard from you, doggie. Whenever one is out of touch, doggie,
18 for more than a month to two months, dude, then you fucked up."

19 The next thing that happens is that Tigre gets beat,
10:58AM 20 right? And you heard the Tigre beating where you saw Tigre,
21 then you saw Tigre, right? Not exactly a small guy. I think
22 the beating of Tigre, once you've seen what Tigre actually
23 looked like, maybe that recording meant a little something more
24 to you, but after that beating came the beating of Master.

25 (Video played.)

1 "Casper, Lobo, Checha, you guys are the ones that are
2 going to beat him."

3 (Video played.)

4 Now, did you hear that? Did you hear that? After you
5 hear that, ladies and gentlemen, do you have any doubt in your
6 mind about these four defendant's commitment to MS-13 and what
7 it is and what it's all about. The things they're willing to
8 do on behalf of the enterprise, the things that they're willing
9 to do to maintain the discipline of the enterprise, if they
10 have any question about or lack of commitment to what MS-13
11 stands for?

12 One of the other things that, you know, the important
13 point of all that, Negro, Rebelde, Playa beat Tigre. Lobo,
14 Checha and another person end up beating Master. Everybody in
15 the clique participates in this discipline process, and all
16 four of the defendants that are in this courtroom participated
17 in it in some way, shape or form.

18 All right. Lobo was there, Playa was there, you heard
19 the audio recording identifying other people that participated
20 in it, all right. Money also went to support the MS-13
21 programs, right. You heard some talk about this during the
22 course of the trial. Although, I think at the end of the day,
23 discussions about the programs didn't really end up amounting
24 to all that much during the trial.

25 You heard that around 2013, MS-13 started to try to

1 assert more control from El Salvador about programs and try to
2 sort of maintain more control over what the cliques were doing,
3 and you heard that the Eastside guys joined the East Coast
4 Program. And then after, there was some grumbling about
5 joining the East Coast Program and about the fact that they
6 didn't like necessarily having to sort of get instructions from
7 other people, right, and the reason why is evident from this
8 Casper recording from October 24, 2015, right?

9 "There are many of us who have killed, homie, and we
11:02AM 10 deserve their respect," their being the MS-13 members in
11 El Salvador, right? "We don't have to have them trying to
12 pilot us."

13 Now, does that mean that they stopped being part of
14 the MS-13? Does that mean they stopped believing in the goals
15 of the organization? Does that mean they didn't want to do
16 anything to further the organization? No. Instead of being in
17 the East Coast Program, they just found another program, the
18 Hollywood program, that they liked better, right? And not only
19 that, they beat in -- they continued to discipline their own
11:03AM 20 members, and they jumped in new members right before the case
21 came down.

22 So there's been a lot of talk about during the early
23 stages of the trial, but at the end of the day, I don't think
24 it ended up mattering very much because MS-13 is all about one
25 thing, right? As Muerto put it, "Even though we're different

1 cliques, we are all united under the same two letters," right?

2 So you heard some stuff at the beginning of the trial
3 about administrative things with programs and what that means.
4 At the end of the day, they were in the East Coast Program,
5 they griped about being in East Coast Program, they joined a
6 different program. They certainly didn't get out of MS-13, and
7 the way that you know that, among many other ways, is that they
8 continued to look for and jump in new members.

9 One of the best illustrations about how MS-13 members,
11:04AM 10 regardless of their clique, work to achieve the goals of the
11 organization was the Vida Loca murder, right, and I just want
12 to talk about that for a few minutes, right? Vida Loca is a
13 member of a clique, Chelsea Loco, right? He gets into a fight
14 at a beer hall, right? He loses the fight to a chavala, right?
15 The next day he's going back. He wants revenge.

16 He calls Crazy who's a member of the Everett clique.
17 Where is Crazy? Crazy is hanging out in the garage in Everett
18 with several other members of the Eastside clique. Crazy has
19 got a gun. Everybody recognized the gun as Crazy's gun.
11:04AM 20 That's a gun that Crazy always had. Tigre was actually with
21 Crazy in Lawrence when Crazy bought it.

22 There's a discussion at the garage. Vida Loca says,
23 "I want the gun brought over here. I want to do this murder."
24 This is talk about whether this is a good idea or not. Muerto
25 says, "I don't know. It sounds like Vida Loca is drunk. I

1 wouldn't do it." Crazy says, "We're doing it." Checha drives
2 Crazy with his gun and Brujo also armed with a gun over to a
3 beer hall. Vida Loca goes in guns blazing and kills the
4 chavala and hits another man in the chest, right?

5 Later on that day, agents used CW-1 to record a
6 conversation with Crazy and Danger where it was clear that
7 Vida Loca did the murder and that Crazy got his gun back,
8 right? And two days later, the FBI used CW-1 to help them
9 arrest Vida Loca before he was able to escape.

11:05AM 10 And Brujo. Who is Brujo? He's the guy that went to
11 back up Vida Loca and who went with Crazy, right? It's this
12 guy right here. Brujo is the same guy that was in the Animal
13 jump-in video in January 8, 2016, right, so the guy who says
14 let me them come and feel the pressure, they need to stick the
15 knife in and see what happens.

16 What does all that show? It shows you that what
17 Muerto says about the cliques is right, right? People
18 associate in different cliques, but they are all united under
19 the same letters. This was three different cliques, right?

11:06AM 20 Chelsea, Everett, and Eastside, working in conjunction with
21 each other to commit a murder, to provide backup for that
22 murder, to provide transportation by Checha in the murder.

23 And you'll remember they ended up disciplining one of
24 the Eastside members, Chentino, for not doing enough at the
25 murder scene, right? Chentino was there, right, sees the fight

1 with Vida Loca, sees Vida Loca lose, he doesn't do anything
2 about it. According to the testimony, he's also there the next
3 night when the murder happens, right?

4 That can't be permitted. When you are in MS-13, if
5 you see a chavala and you see an MS-13 attacking a chavala or
6 in a fight with a chavala, you have to do something about it,
7 and if you don't do something about it, you're getting a
8 beating or worse. And who orders that? Casper. Right?
9 Casper. Muerto and Tigre described that exactly the same way,
10 right?

11:07AM

11 That is a good example of why you should credit Muerto
12 and Tigre's testimony, right, they didn't always talk about the
13 same things, right, they weren't always present for the same
14 things, but when they did talk about the same things, they
15 described them in very similar ways. They described how that
16 murder was done in the same way. The way that they described
17 the murder ended up being corroborated by recordings that were
18 done without their knowledge.

11:07AM

19 And I think, more generally, it is a way that you can
20 be confident that the other parts of their testimony concerning
21 the 2008 beer bottle attack with Playa, or concerning the
22 machete attack in Maverick Square, or the Highland Park attack
23 that Muerto does, right?

24 They don't put themselves into these things and say,
25 you know, I really didn't want to do it, but Playa made me,

1 right? I didn't really want to attack that chavala, but Playa
2 ordered me out of the car, or Casper said if you don't do it,
3 you're going to get a beating, right?

4 They were enthusiastic participants in these crimes,
5 right? They said not only were they enthusiastic participants
6 in these crimes, these guys were enthusiastic participants with
7 them. They never minimized their own role in the violence.
8 They never said I only hit him once with a beer bottle, but it
9 was really Playa who put him down in the street and tried to
10 kill him, right?

11 Muerto and Tigre were both perfectly consistent with
12 the fact that they were eager participants in these attempted
13 murders, right? It's just that they also said that it was part
14 and parcel of their work in the gang and that other people that
15 were in the gang did it with them.

16 I want to jump ahead briefly, ladies and gentlemen,
17 because I think I'm about to be out of time and I'll sit down
18 and get another opportunity to talk with you in the rebuttal.

19 I want to talk very briefly about the protection
11:09AM 20 details and then talk about sort of the evidence that should
21 convince you beyond any reasonable doubt that these defendants
22 are guilty.

23 The first is -- let's talk just briefly about the
24 protection details. I really don't think there's a lot to say
25 about the protection details. They're very easy to understand

1 and the evidence against them is very straightforward, right?

2 Lobo and Checha could not have been clearer on their
3 calls, with -- the recorded calls and the transcripts that you
4 saw that they were willing, ready, and able to get paid to
5 transport what they thought was kilograms of cocaine -- that
6 was kilograms of cocaine from Massachusetts to New Hampshire,
7 right?

8 There's nothing about it that was difficult to
9 understand. Muerto is the common denominator with all of these
11:09AM 10 deals. When Checha does it, he has suggestions on the
11 transcript about how to do a good job with the protection
12 detail, and it turns out that Checha didn't do any of the other
13 protection details, it's too bad, right? Checha was the only
14 one that was any good at it, right? What do you know from the
15 Checha protection detail? He spotted the cop on surveillance,
16 right? He saw one of the officers in the truck with a front
17 license plate missing, right? So Muerto and with -- and,
18 finally, the final detail, the 5 kilo detail you know from the
19 video itself.

11:10AM 20 (Video played.)

21 Uno, dos, tres -- right.

22 (Video played.)

23 Lobo and Lobo in the back seat getting the money, all
24 right. And you know that the last drug protection detail is
25 for 5 kilos for a variety of reasons:

1 1, Muerto says, everybody always knew how much drugs
2 we were transporting.

3 2, that deal, unlike the other deals, was different,
4 right? There was a lot of people at this deal, right?
5 Everybody knows that this is a bigger deal. There's not just
6 one car for a follow car, there's two cars for surveillance.
7 There's multiple people from multiple cliques that are
8 participating in that protection detail, all right.

9 So all of them were willing to do it, all of them got
11:11AM 10 paid to do it. Some of them did a good job at it. Others went
11 along, but all of them were part and parcel of the conspiracy
12 believing that they were transporting kilograms of cocaine from
13 Massachusetts to New Hampshire.

14 So before I sit down, I just want to say one word
15 about the charge of racketeering conspiracy, all right.
16 Judge Saylor is going to give you very detailed instructions on
17 the law at the end of the case, and I don't want to spend a lot
18 of time on it now, but there's a couple of things that the
19 government has to prove beyond a reasonable doubt to convict
11:12AM 20 these defendants of that offense.

21 You have to prove that there was a conspiracy to
22 commit the crime of racketeering, which is to conduct the
23 affairs of an enterprise affecting interstate commerce through
24 a pattern of racketeering activity. You have to prove that the
25 defendants knowingly and willingly agreed to participate in

1 that conspiracy, and you have to find that the defendants or
2 another member of the conspiracy agreed to commit at least two
3 racketeering acts, and that is so important, all right. That
4 is so important.

5 We don't have to prove that these men did a murder or
6 an attempted murder for you to find them guilty, all right. We
7 did prove it. You don't have to find that to find them guilty,
8 all right. You know that the evidence proves the first element
9 because you heard that each defendant was a member of MS-13.

11:13AM 10 MS-13 is an organized gang, membership requirements, rules,
11 ongoing criminal purpose.

12 Each defendant regularly attended clique meetings
13 where they discussed paying dues, they discussed the criminal
14 activities that they were participating in, they discussed
15 buying clique guns to attack clique rivals and to defend
16 themselves against rival attacks. They jump in new members,
17 they punish people for beatings for failing to live up to the
18 rules of MS-13.

19 MS-13 is an enterprise. You know that that enterprise
11:13AM 20 affected interstate commerce, right? The Eastside clique
21 bought guns that moved in interstate commerce. They called
22 El Salvador, they used telephones to communicate with each
23 other. They sent money to El Salvador. They sent money to
24 leaders in El Salvador, both for the program and to get their
25 own deported men back.

1 You know that the defendants knowingly and willingly
2 agreed to participate in this enterprise because you saw the
3 evidence of this trial, right? You know that a person doesn't
4 become an MS-13 homeboy by accident, right?

5 You are a member when, as all four of these people
6 were, when they continued to participate in the affairs of this
7 enterprise, as all four of them did. You have to make an
8 affirmative showing, and that's what showing up in the garage
9 and showing up at the clique meetings is all about. Every time
11:14AM 10 there's a clique meeting, these guys reaffirmed I'm part of
11 this enterprise when they show up for these clique meetings.

12 And, finally, you need to know that they knowingly and
13 willingly agreed to join and that they knew, when they did it,
14 that somebody, not necessarily them, was going to commit two or
15 more racketeering acts.

16 Is there any doubt in your mind right now that these
17 guys knew that somebody in the MS-13 enterprise was going to
18 commit two murders or attempted murders? Do you have any doubt
19 in your mind? Do you? If the answer to that question is no,
11:14AM 20 then this is a very simple case.

21 The answer should be no, right, right, because you
22 know what MS-13 is and you know what it's about. You know what
23 the violence is. You know what their goals are, you know what
24 their mission is, and not only that, you know what their sort
25 of desire is. In this case, we actually proved that these

1 defendants regularly did do attempted murders and murders,
2 right?

3 You've got Checha trying to stab a chavala with a
4 machete at the Maverick Square T-station, you've got him
5 driving Brujo and Crazy to the murder scene, to help Vida Loca
6 commit that murder. He gets clique ammo from Muerto to do a
7 shooting, and he beats Master for missing meetings.

8 With Lobo, when he got arrested and he believes CW-1
9 was an informant, he asked Casper for what? A green light. "I
10 want to kill that guy," right? "I think he's a snitch. Checha
11 and I have a plan to kill him."

12 Lobo tells Muerto when they're all arrested, "Look, if
13 Casper had only approved of my plan, that guy would have been
14 gone, and none of us would be here right now. We wouldn't have
15 any of these problems," right?

16 Playa is along with Muerto when he breaks that beer
17 bottle over that man's head and leaves him gasping for air in
18 the street in East Boston. He collects the money that enables
19 MS-13 to continue to thrive, he beats Tigre for violating
20 clique rules, and he's actually the one that counts Animal in
21 to the Eastside clique and welcomes him to La Mara.

22 And Casper is the one that is presiding over all of it
23 with his hand on the throttle, right? He orders Chentino
24 beaten for not supporting Vida Loca during the murder. He
25 calls the meetings where the gang's business is discussed. He

1 gets the reports about violence committed by people that are in
2 his clique and that want to be in his clique. He recruits new
3 members. He helps jumps in the new members. He jumps in the
4 MS-13's next generation. Not just Animal, David and Luis, too,
5 so that the gang can continue to grow and thrive and flourish.

6 Ladies and gentlemen, the evidence I've just
7 highlighted is really just a fraction of the evidence that
8 you've heard in this case. The legal elements I've just
9 described are really kind of a Reader's Digest version of what
10 Judge Saylor is going to give you in much more detail at the
11 end of the case.

12 But when you look at all of the evidence here that
13 you've seen and that you've heard and you apply the law as
14 Judge Saylor gives it to you, there is really only one verdict
15 that is consistent with the evidence. There's only one verdict
16 that is consistent with the evidence, and that verdict is
17 guilty against Casper, against Playa, against Lobo, against
18 Checha on all counts. Thank you.

19 THE COURT: All right. Thank you, Mr. Pohl.

11:17AM 20 All right. Mr. Murphy.

21 MR. MURPHY: Thank you, Your Honor.

22 THE COURT: While he's getting set up, if anyone wants
23 to stand up and stretch your legs, that's fine.

24 MR. MURPHY: May I proceed, your Honor?

25 THE COURT: Yes. Go ahead.

CLOSING ARGUMENT

MR. MURPHY: It's easy to paint with a broad brush, but in a case like this, a criminal case with charges as serious as these, the facts matter, the details matter, and the evidence matters.

I'd ask you if we could pull up Exhibit 97. You saw Exhibit 97 at the beginning of this case, and you know what it depicts and who it depicts. It depicts Joel Martinez, "Animal," with his hand on a knife. If we could go to Exhibit 99. Exhibit 99 depicts Joel Martinez wiping the blood off a knife, the blood that you know came from a boy named Irvin De Paz that he had stabbed three times only a few moments earlier, who did not survive that assault.

But what else do you see if you look at 97 and 99? You see a date, and the date is September 20, 2015. What do you know about September 20, 2015? You know that as of September 20, 2015, the evidence shows that Herzzon Sandoval did not know who Joel Martinez was. The evidence shows that he never met Joel Martinez. The evidence shows that he did not know who Irvin De Paz was. He had never met Irvin De Paz.

The evidence shows that on September 20, 2015, Mr. Sandoval had nothing, absolutely zero to do with Joel Martinez's murder of Irvin De Paz. Nothing. And if you look at all of the evidence in this case, members of the jury, all of the evidence the government has presented, what you'll

1 see is that that's a theme that cuts across all of the evidence
2 of the violent acts that the government has presented.

3 Mr. Sandoval never agreed to participate in any of
4 them, he never participated in any of them, and the evidence
5 will show that on those rare occasions when he heard about
6 them, he learned about them after the fact, and that's an
7 expression I'd ask you to remember because I'm going to return
8 to it later, after the fact.

9 If I may work with the document camera. Now, Mr. Pohl
11:21AM 10 talked about most of these incidents in the course of the
11 trial. I made a list of all of the crimes of violence that the
12 prosecution put some evidence of in the course of the trial.
13 And let me take a moment to walk through them with you now.

14 Let's start with the alleged Maverick Square incident.
15 I call it an alleged incident because apart from the testimony
16 that we heard from Muerto, there's no evidence that it ever
17 took place. What did Special Agent Wood testify when he was
18 cross-examined by all of us, that in order to bring evidence
19 into court, even the FBI says we need corroboration.

11:22AM 20 He testified that he wouldn't even send an
21 intelligence report out to another FBI field office, never mind
22 bring it into a court of law, unless there was some backup and
23 there was some corroboration. And there's absolutely no
24 corroboration that anything like that attack in Maverick Square
25 happened.

1 I'm sure other defense counsel will talk about it, but
2 there ought to be a police report of a visit to Checha's house
3 if something like that occurred. You just heard about that
4 from Muerto, the man the government says you can trust, but who
5 lied on the stand, as you know, about whether he was a drug
6 dealer.

7 The government just said Muerto and Tigre, they didn't
8 always talk about the same things. Well, one thing they didn't
9 talk about the same thing was whether Muerto was Tigre's drug
11:23AM 10 dealer. Muerto says, "No, I never did that." Tigre said, "I
11 used to buy cocaine from him all the time," so Muerto's word is
12 suspect.

13 And there's no evidence whatsoever that this alleged
14 Maverick Square incident ever happened, no credible, believable
15 evidence, but even if it did, is there any evidence that
16 Mr. Sandoval agreed to it? No. Is there any evidence that he
17 participated in it? No. Is there any evidence that he ever
18 even heard about it, that he had any knowledge? No.

19 Then we have the alleged Heineken bottle attack.
11:24AM 20 Again, same thing, zero corroboration. We have no way of
21 knowing other from the word of Muerto, who you know lied on
22 that stand, whether that happened at all, but even if it did,
23 is there any evidence that Mr. Sandoval agreed to it? No. Is
24 there any evidence that he participated in it? No. Is there
25 evidence that he knew about it? No.

1 Now, we have the three drug protection details, and
2 I'm going in chronological order as best I can. You heard even
3 Special Agent Wood acknowledge when I cross-examined him that
4 Pelon, CW-1, asked Mr. Sandoval whether he wanted to
5 participate, and he turned him down. Mr. Sandoval said no to
6 these drug protection details.

7 You know from the evidence that these weren't clique
8 activities, they were activities that were conducted by a
9 number of different people that the money was not brought back
10 to the clique that was earned during the course of those drug
11 protection details and that these were events that were
12 orchestrated by the FBI but didn't have anything to do with the
13 operation of the Eastside clique.

14 Did Mr. Sandoval agree to do them? Special Agent Wood
15 told you no. Did he participate in them? You know what the
16 evidence says. The evidence says no.

17 Did he have knowledge of them? Remember what the tape
18 said. Remember what that audiotape that Mr. Norkunas offered
19 in evidence said. What did Pelon say to the others in the very
20 first protection detail? Don't tell Casper. There's no
21 evidence that Mr. Sandoval knew anything about these.

22 The fatal shooting of Javier Ortiz in Chelsea on
23 December 14, 2014. I'm going to ask you as you talk about that
24 event in your jury deliberations to focus really on the details
25 and not allow the government to paint with a broad brush.

1 Focus on what the evidence shows really happened.

2 Is there any evidence that Mr. Sandoval agreed that
3 anything ought to have happened to Mr. Ortiz? There's no
4 evidence that he knew anything about the events of that day
5 before they occurred.

6 He was not at the garage when the call came in to
7 bring the gun. He certainly never agreed that Vida Loca should
8 shoot Javier Servellon Ortiz. Is there any evidence that he
9 participated? Absolutely not.

11:27AM 10 Did he know? The evidence shows that he learned about
11 it after the fact. I'm going to use these initials, after the
12 fact, ATF. Mr. Pohl argued that Chentino was disciplined for
13 failing to assist Vida Loca in the murder, but the evidence
14 shows that that's not what happened because the evidence shows
15 that Muerto didn't assist Vida Loca in the murder. What the
16 evidence shows is that Vida Loca -- I'm sorry, the evidence
17 shows that Chentino was disciplined for what Chentino did the
18 day before when Vida Loca was in a fist fight, and let's look
19 at Exhibit 72, he sustained the bruise that you can see here,
11:28AM 20 he did not come to Vida Loca's aid in the fist fight the night
21 before. That does not show that Mr. Sandoval agreed to engage
22 in a conspiracy that involved a racketeering act of murder.

23 The Chelsea park stabbing. We spent a lot of time on
24 that on May 12, 2015. That was Pelon and Muerto and Domingo.
25 Is there any evidence that Mr. Sandoval agreed to that? The

1 answer is no. Is there any evidence that he participated in
2 it? No. And any evidence that he ever even learned about it?
3 Think about the testimony. No one testified that Sandoval was
4 ever told about that. Again, the answer is no.

5 We've talked already about the September 20th
6 stabbing, fatal stabbing of Irvin De Paz. No evidence that
7 Mr. Sandoval agreed to it, no evidence that he participated
8 and, again, he learned about that, as you can tell from that
9 December 6th tape from Pelon, from CW-1, five weeks after it
10 took place, after the fact.

11:29AM

11 The December 20, 2005 attack by Animal and Tigre on
12 Everett Street in Chelsea. Did you notice that when Tigre
13 described that attack, he didn't say anything about a knife or
14 a stabbing? He described it as being, as Animal using a chain.
15 And is there -- what did he say about having said anything to
16 Casper afterwards? Of course, there's no corroboration for the
17 fact that he ever talked to Casper after that event about that
18 event. No corroboration at all, but what did he testify on
19 July -- I'm sorry -- on February 15th in response to
20 Ms. Lawrence's questions?

11:30AM

21 "And when you informed Casper, what did you tell
22 Casper?"

23 "That we had beaten up a chavala on Broadway and
24 Chelsea."

25 Nothing about a stabbing. He didn't testify about the

1 stabbing on direct, and he never said that he told Mr. Sandoval
2 about a stabbing.

3 The answer to that question, "Did Mr. Sandoval agree
4 to this?" "No." "Did he participate in it?" "No." Let's put
5 a question mark here, but if he did, we know it was after the
6 fact.

7 The January 26 attack on Chestnut Street. Again,
8 there's no corroboration that that ever happened. We didn't
9 hear anything about a call to the police. We didn't hear any
11:31AM 10 police response, but there's certainly no evidence that
11 Mr. Sandoval knew. There's no evidence that he participated,
12 and if there is any evidence that he heard about it, it was
13 only after the fact, and there is no such evidence.

14 Why does all this matter? All of this matters,
15 members of the jury, because of what I expect Judge Saylor is
16 going to tell you about the case in his jury instructions.

17 Let me focus on four things that I expect Judge Saylor
18 will tell you. I'm going to read the first three of them
19 directly and talk at length about the fourth one. Although the
11:32AM 20 defendants are being tried together, you must give separate
21 consideration to each defendant.

22 Don't let the government paint with a broad brush.
23 Look at the evidence separately about what Mr. Sandoval did and
24 what he agreed to do. There are other counts in the indictment
25 against other defendants who are not part of this trial, and

1 this is perhaps the most important instruction from our
2 perspective that we would ask you to pay careful attention to.

3 The government must prove beyond a reasonable doubt
4 that each defendant agreed to participate in the conspiracy and
5 that the conspiracy involved, or would involve, the commission
6 of two racketeering acts.

7 The Court will tell you that there are five specific
8 racketeering acts that the government has to prove beyond a
9 reasonable doubt, are the racketeering acts that Mr. Sandoval
10 agreed to participate in a conspiracy to commit:

11 Murder; armed assault with intent to murder; assault
12 with intent to murder; conspiracy to commit murder; and crimes
13 relating to drug trafficking and the distribution of controlled
14 substances.

15 If you do not find beyond a reasonable doubt, if the
16 government hasn't proved to you beyond a reasonable doubt that
17 what Mr. Sandoval signed up for was a conspiracy that would
18 involve the commission of those specific crimes, that means the
19 evidence will call for you to acquit Mr. Sandoval.

11:34AM 20 There's a crime in particular that I'd like to point
21 out to you that is not on that list of the five, that's not
22 charged as a racketeering act in this case, and that's the
23 crime of being an accessory after the fact to murder or
24 attempted murder.

25 If that's what you conclude from the evidence, it's

1 not sufficient, it's not enough to conclude that Mr. Sandoval
2 has been proved by the government guilty beyond a reasonable
3 doubt of a racketeering activity.

4 Now, what does the evidence show about what it was
5 that Mr. Sandoval really agreed to do? Well, Mr. Pohl
6 mentioned that there was some evidence at the beginning of the
7 case about Mr. Sandoval's dispute with the MS-13 leaders in
8 El Salvador, and I want to talk about that because it will show
9 you what was at issue here. It will show you what Mr. Sandoval
10 agreed was part of being in the Eastside clique of MS-13, and
11 it will show what he did not agree was part of being in that
12 MS-13 clique.

13 It will show you what he agreed to do and what he
14 refused to do, even to the point where the MS-13 leaders in
15 El Salvador wanted to take him out of the equation, to kill him
16 because he would not agree to MS-13's -- El Salvador's goals.

17 The evidence that you heard about this came from two
18 main sources. The first was Special Agent Wood's testimony on
19 the stand. If you remember, I cross-examined him at length
20 about what the leaders in El Salvador were trying to do. He
21 testified that he had gone down there in 2015 and that the
22 MS-13 leaders in El Salvador were trying to centralize control,
23 were trying to make the cliques in the United States more like
24 MS-13 in El Salvador.

25 So that's one source of information on this chart.

1 It's the government's own witness. The other source, the
2 stipulation that Ms. Rodriguez read at the end of the evidence
3 on Friday, facts the government has agreed to.

4 The first entry on this chronology simply sets the
5 stage. It tells you that as of May 28, 2013, at the very
6 beginning of this investigation, CW-1 had a direct line into
7 MS-13 leadership in El Salvador.

8 At the beginning of February, 2014, CW-1 tells the
9 agent that MS-13 leadership wants the U.S. cliques to follow
11:38AM 10 MS-13 rules set by MS-13 in El Salvador.

11 And you'll see as we go through the chart that there
12 are really three main rules MS-13 in El Salvador is telling the
13 cliques here to follow: Commit serious acts of violence;
14 collect rent, that is, extortion from local businesses; and pay
15 tribute to leaders in El Salvador so that we can take care of
16 our people in prison.

17 And the evidence will show that, as to each of those
18 requests, Mr. Sandoval said no, no, no, even when it meant that
19 his life was threatened. So on February 7, 2014, CW-1 tells
11:38AM 20 the agents that MS-13 wants to extort money from local
21 businesses and to discipline clique rule infractions, not with
22 these beatings that you've seen, but by shock. What does CW-1
23 tell the agents is Mr. Sandoval's position? He does not want
24 to follow these rules.

25 As a matter of fact, CW-1 tells the agents that

1 Mr. Sandoval has told Muerto that he wants to keep the ESLS
2 meetings secret from MS-13 in El Salvador. What kind of
3 conspiracy, what kind of agreement is that?

4 The next day, Pelon tells the agents that Mr. Sandoval
5 doesn't want the money sent to El Salvador, the tribute that
6 MS-13 in El Salvador is paying, he wants the money to go to
7 deported ESLS members.

8 Later in that very month, Mr. Sandoval tells -- CW-1
9 tells the agents that Sandoval is angry at another MS-13
10 member, Tremendo, from a different clique because Tremendo
11 committed a murder and is acting like he's in El Salvador.

12 The dispute continues into the next year. In May of
13 2015, Pelon, CW-1, tells Bandito, another MS-13 leader in
14 El Salvador, that Bandito could ask any clique, the only ones
15 out on the street are him. That is CW-1, Pelon, and Muerto.

16 On August 5, 2015, Pelon tells the agents that Dante,
17 an MS-13 leader in El Salvador, has ordered someone to
18 discipline Sandoval. He's not with the program, he's not in
19 line. And the agents take that warning so seriously that they
11:41AM 20 tell Mr. Sandoval that his life is in danger. What kind of a
21 conspiracy is that?

22 And on September 5, 2015 in a recorded call that
23 Special Agent Wood testified about, you get a clear sense about
24 what this dispute was about between the leaders of MS-13 in
25 El Salvador and Mr. Sandoval.

1 Pelon, CW-1, actually gives Mr. Sandoval some advice
2 about how he would handle the dispute. Calmly tell Gora, the
3 MS-13 leader in El Salvador, down there it's easy to kill and
4 it's easy to collect, but not here.

5 Sugar, another MS-13 leader on the call, gets on the
6 phone with Mr. Sandoval and when Mr. Sandoval says, "No, we are
7 not with the program, we are not with that program," he's again
8 threatened, "The barrio will be making decisions for ESLS and
9 not Casper and his members."

11:42AM 10 And this dispute continues until the very end of this
11 case. At the Virginia meeting you heard about, Chucky, the
12 leader of the East Coast Program, and Sugar, the MS-13 leader
13 in El Salvador ask Pelon, CW-1, for a report.

14 And what does CW-1 say? The old guy, Mr. Sandoval, is
15 pushing them down. He's not with the program. He's not
16 agreeing to MS-13 leadership's demands. And what does the
17 leadership in El Salvador say, "Why don't you kill him?" That
18 shows -- that evidence shows that Mr. Sandoval was not the
19 requirements that MS-13 leadership's demands made on his
11:43AM 20 clique.

21 And what you have to decide based on the evidence is
22 what he agreed to do, and this evidence shows that he did not
23 agree to be part of a clique that followed the rules laid down
24 by MS-13 in El Salvador, that he did not agree to be part of a
25 clique that agreed to participate in a conspiracy that involved

1 those five racketeering acts; murder, conspiracy to commit
2 murder; assault with intent to murder; assault, armed assault
3 with intent to murder; and drug trafficking.

4 Now, there were some crimes. I said this in my
5 opening statement, there were some crimes that the ESLS clique
6 and Mr. Sandoval did agree to commit. You heard about them.
7 You heard about their agreement to possess firearms illegally.
8 You heard a lot about the clique gun.

9 Remember, of course, that for all of 2015, from
11:44AM 10 January to December, there was no clique gun after it had been
11 taken away by Lobo, so ask yourselves how much of a priority
12 that could be, but in any event, as Judge Saylor told you
13 during the trial and as he will again tell you in his
14 instructions, possession of firearms or conspiracy to possess
15 firearms is not a racketeering act. It doesn't count.

16 Agreeing to bring people into the country illegally.
17 Did this clique agree to that or did Mr. Sandoval agree to
18 that? Yes. Was that, in fact, one of the main reasons to
19 exist in the first place, but it's not a racketeering act.
11:45AM 20 It's not one of the five crimes that count, and Judge Saylor
21 will tell you the conspiracy to violate the immigration laws is
22 not a racketeering act.

23 The beat-ins and the beatings for discipline. You
24 heard a lot about them in the closing. They are not pleasant
25 to watch. They're difficult to watch, but you have a job to do

1 here, and that is to evaluate the evidence on the charges that
2 the government has made. And, again, I expect that Judge
3 Saylor will tell you that assault and battery, even assault and
4 battery with a weapon is not a racketeering act.

5 And as I said near the outset, there is one other
6 crime that I want to talk about that Judge Saylor will tell you
7 is not a racketeering act, and that's accessory after the fact
8 to murder and attempted murder.

9 I expect that Judge Saylor will tell you that a
11:47AM 10 perpetrator is guilty of the crime of being an accessory after
11 the fact to a murder or attempted murder if he or she: 1,
12 knows that another person has committed a murder or attempted
13 murder; 2, harbors, conceals, maintains, or assists that
14 person; and, 3, with the intent that that person shall avoid or
15 escape detention, arrest, trial, or punishment.

16 That's exactly what Mr. Sandoval did when it came to
17 Joel Martinez. And if he were charged in this case with being
18 an accessory after the fact to murder or even an accessory
19 after the fact to other crimes, like attempted murder, I
11:48AM 20 wouldn't have very much to say to you at all because the
21 evidence shows that that's what he did, but as Judge Saylor
22 will tell you, being an accessory after the fact, learning
23 about a crime after the fact, helping the person escape the
24 authorities after the fact is not a racketeering act.

25 And what the government has to prove beyond a

1 reasonable doubt is that Mr. Sandoval agreed to participate in
2 a conspiracy that would involve the commission of racketeering
3 acts, one of those five crimes.

4 Let me address quickly three other points. The
5 blow-up that we saw during the government's closing from
6 Exhibit 28 at page 4. I don't know whether we could see that.
7 Thank you.

8 The government blew up that paragraph, Casper -- thank
9 you. And the government used that paragraph in its opening,
11:49AM 10 but do you remember Ms. Rodriguez's cross-examination of
11 Ms. Huacuja on this point? What did she say? She said that
12 the word in Spanish "pegado" -- and I won't pronounce that
13 correctly -- does not mean kill.

14 "There are many of us here who have killed," and that
15 she took that interpretation of the word, she placed that
16 meaning on the word because Muerto, the man who forgot that he
17 sells drugs, whose credibility I suggest you should place no
18 value on, he's the one who provided the interpretation of that
19 word for her.

11:50AM 20 Muerto, the same Muerto -- if we could go to page 6 of
21 that transcript. Thank you -- who explains that he did about
22 four killings in El Salvador but came in here and said, just
23 bluffing, just boasting, not telling the truth.

24 Point 2, the second point. You heard about green
25 lights, and you heard the testimony again from Muerto that

1 after the arrests in this case -- and this is hard to follow --
2 that Lobo told Muerto that before the arrests, after his gun
3 was taken, he asked Mr. Sandoval for permission to green light
4 Pelon, but that Mr. Sandoval said, "No, I need more evidence."

5 Well, does that make any sense to you at all? Any
6 sense to you at all? There's no corroboration for it, to
7 start. It's just Muerto's word about what Lobo supposedly
8 told, him. But if that were true for a whole year after the
9 gun was taken away from Lobo in January of 2015, Pelon, CW-1,
11:51AM 10 is coming to all these clique meetings and the others are
11 suspecting that he's an informant, is there ever a time when
12 he's put in the circle and asked questions? Is there ever a
13 time when he's searched? Is there ever a time when he is put
14 on the spot and asked whether he's an informant? The answer to
15 that question you know is no, and that shows you that you
16 should give no credibility to that allegation at all.

17 What, in essence, is the government's argument in this
18 case? It's not about anything Mr. Sandoval did or agreed to do
19 before the fact. It's about MS-13, and the government paints
11:52AM 20 with a broad brush and tells you that what MS-13 is about is
21 all about violent assaults.

22 And sometimes, sometimes if the same line, if the same
23 story, if the same narrative is repeated over and over and over
24 again, it begins to carry the ring of truth, but let's break
25 that apart. Let's look at what the evidence shows about it,

1 and let's start with the main thing that the government has
2 stressed from the very beginning of this case, that the price
3 of entry for getting into MS-13 is to commit, initially, a
4 serious violent crime like a stabbing, or later, murder.

5 The government paints with a broad brush because it
6 wants you to think that each one of those defendants,
7 Mr. Sandoval included, must have done that, even though there's
8 no evidence that they ever did.

9 Well, what's the evidence? We heard from
11:54AM 10 Special Agent Wood, the government's expert on MS-13, that to
11 become a homeboy, someone would need to commit some kind of
12 violent crime, even killing, against rivals or suspected law
13 enforcement cooperators.

14 Well, we heard from two MS-13, members and what did
15 they tell you? Tigre said he was drunk the first time he
16 became an MS-13 member when he was beaten in, that he'd never
17 met Mr. Sandoval before, and there's no evidence that he ever
18 committed a crime in order to get into MS-13, no evidence at
19 all.

11:55AM 20 And Muerto. Mr. Pohl just said that he said in his
21 testimony that he stabbed the man during his evaluation period,
22 but remember what Muerto actually said. That's what he said on
23 direct examination, the government elicited that information
24 from him, but what happened when he was subject to
25 cross-examination?

1 Mr. Iovieno pointed out that Muerto had said to the
2 FBI, all I did was get into school yard fights to get into
3 MS-13, and Muerto said I don't remember -- and by the time
4 Mr. Lopez cross-examined him the next day, he had admitted that
5 he never committed a serious violent assault other than school
6 yard fights before he was admitted to MS-13.

7 The idea that these men, and Mr. Sandoval included,
8 must have committed violent crimes to get into MS-13 in the
9 first place is one of those lines that gets repeated in the
11:56AM 10 course of a trial, but there's no evidence to back it up.

11 And what about Special Agent Wood's claim that MS-13's
12 policy is to kill cooperators, and if they're unable to kill a
13 cooperator, they kill their family members. He said that
14 certainly, and you saw that scripted stage drama with Muerto.

15 Do you think that was a coincidence that he did that
16 at the very end of the day last Thursday after Mr. Pohl asked
17 him, what do you think will happen to you for testifying, or do
18 you think that was a practice rehearsed answer?

19 There's no evidence, not a shred of background that
11:56AM 20 that has happened, not in this courtroom, and the fact that
21 it's been trotted over and over again in the course of this
22 case is a little bit like the Exhibit 50, the gigantic machete
23 that we've seen elicited from Muerto on direct, testified it
24 was his, but only on cross-examination did he learn, did we
25 learn that it was a gift, it never left his bedroom.

1 And I'm going to ask you when you go back to the jury
2 room and deliberate, do not fall victim to the climate of fear
3 that the government has tried to create.

4 You have a lot to listen to today. You've got three
5 more lawyers to hear from here, and then the government gets to
6 have the last word.

7 The government doesn't get to have the last word
8 because we're nice and we let them have the nice word, the
9 government has the last word because it has the burden of
11:58AM 10 proof, the burden of proving that Mr. Sandoval is guilty of the
11 crime of conspiracy to participate in a racketeering enterprise
12 through a pattern of racketeering activity, that is, through
13 racketeering acts, and it's their burden to do that beyond a
14 reasonable doubt.

15 On behalf of myself as counsel for Mr. Sandoval and on
16 behalf of Ms. Rodriguez, I thank you very much for your time
17 and attention, and I ask you when you go back to the jury room
18 to deliberate, think carefully about the evidence. Put the
19 government's evidence to the test. Ask what's the evidence of
11:59AM 20 Mr. Sandoval's agreement? What's the evidence of
21 Mr. Sandoval's participation? And what evidence is there that
22 he did anything in this case beyond violate the firearms laws,
23 conspire to violate the immigration laws and agree to act as an
24 accessory after the fact?

25 Unless the government proves that he's done more than

1 this, I respectfully suggest that you should mark your verdict
2 forms not proven, not guilty. Thank you very much.

3 THE COURT: All right. Thank you, Mr. Murphy. We
4 will take a break.

5 THE CLERK: All rise.

6 (JURORS EXITED THE COURTROOM.)

7 (A recess was taken.)

8 THE CLERK: All rise for the jury.

9 (JURORS ENTERED THE COURTROOM.)

12:18PM 10 THE CLERK: Thank you. You may be seated. Court is
11 now back in session.

12 THE COURT: All right. Mr. Lopez.

13 MR. LOPEZ: Thank you, your Honor. May I proceed?

14 THE COURT: Yes.

15 CLOSING ARGUMENT

16 MR. LOPEZ: Good afternoon, ladies and gentlemen of
17 the jury. I want to start by thanking you for taking time out
18 of your busy lives to sit as jurors in this case. I know it's
19 been a long trial, and the lawyers probably made it a little
12:18PM 20 bit longer that it had to be, and I'll take some responsibility
21 for that, but as jurors in this case, you are performing a
22 vital role in the American system of justice. Jury service is
23 one of the highest obligations of citizenship, so I want to
24 thank you for your service.

25 This is the last time you will hear from Mr. Guzman in

1 this case. We have no rebuttal. The government has the last
2 word.

3 Now, you should know that as far as the facts in this
4 case, you and only you get to decide what the facts are. That
5 is your solemn responsibility, and it is an awesome
6 responsibility.

7 In putting this case in your hands, Mr. Guzman is
8 relying on the oath you took that you would only decide this
9 case on the facts proven to you beyond a reasonable doubt and
12:19PM 10 nothing else, not whether you like the lawyers, not whether you
11 like Judge Saylor, not whether you like any witnesses, not even
12 whether you like Mr. Guzman.

13 You've taken an oath to decide the facts and to decide
14 them divorced from any personal emotions, opinions, and
15 feelings of your own, and I remind you that if you do not do
16 that, if you do not live up to your oath, you will have to live
17 with that fact for the rest of your lives.

18 Now, gang violence is a serious issue in this country.
19 It has been a serious issue for many years. Prosecutors,
12:20PM 20 police, and special agents who investigate and prosecute
21 individuals involved in gang violence are performing an
22 important public service.

23 Mr. Guzman and I take no issue with legitimate
24 investigations. We embrace them, we encourage them. We want
25 to keep our children and our neighborhoods safe, as well.

1 However, investigating crime is one thing, charging an innocent
2 man is quite another.

3 Now, that you have heard all of the evidence, you have
4 not heard any evidence that Mr. Guzman agreed with anyone that
5 he would commit racketeering acts. You've not heard any
6 evidence that Mr. Guzman agreed with anyone that they would
7 commit racketeering acts. There was no evidence because it
8 never happened.

9 What happened in this case is that the FBI really
12:21PM 10 didn't investigate Mr. Guzman. They didn't look into what type
11 of man he was, what his family and friends think of him, what
12 type of father he is, whether he was employed, whether he was
13 even an American citizen.

14 Now, we also know that the FBI didn't have complete
15 control over the criminal that they used to gather evidence who
16 was being being paid by the FBI while at the same time
17 committing crimes that the FBI didn't know about, but
18 Agent Wood admitted to you what he did. He told you that he
19 was on a mission to take down MS-13. He told you that he
12:21PM 20 believes that every person associated with MS-13 is violent.
21 He told you that he did not distinguish between individuals
22 based on their level of violence, or even if they were violent.
23 In his biased opinion, he told you that anyone associated with
24 MS-13 must be violent.

25 Well, we don't live in the black and white world that

1 Agent Wood lives in. We live in a world that is gray, where
2 first impressions are not always accurate, where racial
3 profiling and stereotypes are not always accurate, where the
4 facts really do matter, where an apple is really an apple, so
5 let's talk about what we don't know first.

6 The Court will tell you that a conspiracy is an
7 agreement to commit a crime. Now that you have heard all the
8 evidence, I ask you to ask yourselves, when did Mr. Guzman
9 enter into an agreement to commit a crime? On what date did
10 that occur? With whom did he agree? What crime did he agree
11 to commit? What did he agree to do? What did the others agree
12 to do?

13 You have sat through three weeks of evidence, and you
14 cannot answer these fundamental questions with any certainty
15 because the government did not present you with evidence to
16 answer these important questions. The absence of proof in
17 these critical issues is the achilles heel of the government's
18 case. The absence to proof on these critical issues is
19 reasonable doubt, plain and simple. The absence of proof on
20 these critical issues requires you to find Mr. Guzman not
21 guilty.

22 Now, at the beginning of this case, I told you that
23 the indictment alleges that each defendant agreed that a
24 conspirator would commit at least two acts of racketeering.
25 Now that you have heard the evidence, where did you hear that

1 Mr. Guzman agreed to commit a racketeering act? Nowhere.

2 Where did you hear that Mr. Guzman agreed with someone else
3 that they would commit a racketeering act? Nowhere.

4 I also told you that actions speak louder than words,
5 that what you do is more important than what you say, that what
6 you do reveals your true intentions. Now that you have heard
7 all the evidence, you know that Mr. Guzman did not agree with
8 anyone to commit a racketeering act. He did not agree that
9 anyone else would commit a racketeering act, rather, the
10 government's proof is something like this, some members of
11 MS-13 commit violent acts, therefore all members of MS-13
12 commit violent acts.

13 This is not logical, but this is what the government
14 is asking you to find as a fact. The government says
15 Mr. Guzman was associated with MS-13 and some members of MS-13
16 commit violent acts, therefore, Mr. Guzman must be responsible
17 for the violent acts of others.

18 The government says that it does not have to prove to
19 you that Mr. Guzman committed any violent acts, but that
20 evidence would be helpful to the government if they proved that
21 he did, in fact, commit a violent act, but they did not in this
22 case, or that he was even aware of violent acts before they
23 occurred.

24 No, according to the government, Mr. Guzman's mere
25 association with MS-13 makes him responsible for the violent

1 acts of others. Fortunately, that is not the law.

2 The Court will instruct you that mere association with
3 other persons, even persons involved in criminal activity, does
4 not by itself establish the existence of a conspiracy. Now,
5 it's been said that a conspiracy is a crime involving two
6 intents. The first intent involves two or more people agreeing
7 to commit a crime, but the second intent is that the person,
8 when they're making the agreement, must have a state of mind to
9 commit the crime at issue, in this case racketeering acts.

12:25PM 10 In this case, that means the government must prove to
11 you not only that Mr. Guzman agreed to commit a crime but that
12 when he did, he was agreeing to commit racketeering acts, and
13 you've heard no evidence to support that. I submit to you that
14 after sitting three three weeks of testimony, you do not have
15 any evidence of what Mr. Guzman agreed to do when he became
16 associated with MS-13.

17 In law school, I had a professor who taught me to
18 think critically about facts. He used to tell his students do
19 not swoop, do not jump to conclusions based on false logic.
12:26PM 20 Look critically at each fact and decide whether the evidence
21 proves a particular fact. In this case, this means what did
22 Mr. Guzman agree to do?

23 Well, what did the government not tell you? The
24 government did not tell you when Mr. Guzman became associated
25 with MS-13, the government did not tell you how Mr. Guzman

1 became associated with MS-13, the government did not tell you
2 what the rules of MS-13 were when Mr. Guzman became associated
3 with MS-13. The government didn't even tell you when
4 Mr. Guzman was tattooed, the government did not tell you the
5 circumstances or the context for the tattoo.

6 Now you know that he received that tattoo before he
7 was married, that he was somewhere around 19 years of age, and
8 that he received it when he was a teenager when he was still a
9 kid. And you now know that the name and the date on that
10 tattoo was the date of his grandmother's death, and the name
11 was the name of his grandmother.

12 Now, what else have you heard? Well, you've heard
13 that he refused to participate in the protection details.
14 You've heard no evidence he was involved in any drug
15 trafficking, you didn't hear any evidence that he was involved
16 in any actual gun purchases, you didn't hear any evidence that
17 he participated in any violent acts during the time Pelon was
18 out there videotaping and audio taping, you heard no evidence
19 that Mr. Guzman had prior knowledge of the Highland Street
20 assault that Muerto and Pelon participated in, you heard no
21 evidence that Mr. Guzman had any prior knowledge of the murder
22 by Animal in September of 2015, you heard no evidence that
23 Mr. Guzman had any prior knowledge of the murder by Vida Loca,
24 you heard no evidence that Mr. Guzman had any prior knowledge
25 of the attempted murder by Animal in December 2015, or the

1 assault by Animal in early January 2016, but the government
2 wants you to ignore these important critical facts. Don't do
3 it. Don't allow yourself to accept the government's overreach
4 in this case.

5 What did the government prove Mr. Guzman did? Well,
6 first, he attended meetings, he collected money, he counted
7 money, he kept an account of money, and he was at the beat-in
8 of the Animal, a beat-in that was planned and manufactured by
9 the FBI and executed by its undercover criminal. That's it.

12:29PM 10 I submit to you that the government has placed far too
11 much emphasis on this single incident to prove this case, an
12 incident that they created as if the government was the
13 director of a movie.

14 The Court will instruct you that it is not enough for
15 the government to prove, without more, that Mr. Guzman simply
16 knew of or acquiesced in the conspiracy. The fact that
17 Mr. Guzman merely happened to further the objectives of the
18 conspiracy, without more, is not sufficient.

19 So what did the government do? Well, it tried to
12:29PM 20 prove that Mr. Guzman was involved in prior assaults, but I
21 submit to you that these prior alleged assaults are not
22 credible. They're not believable.

23 First of all, these prior assaults are based on
24 Muerto's testimony. A witness by means of his cooperation
25 agreement was incentivized or motivated to help the

1 government's case to receive the rewards of a shorter sentence
2 and a visa to remain in the United States.

3 You should not believe anything that came out of
4 Muerto's mouth. Muerto's testimony reminds me of an old joke
5 which goes like this: How do you know when someone is lying?
6 Easy, his mouth is moving.

7 I'm not going to go over all the lies and
8 inconsistencies because my time is limited, but I will remind
9 you of a few lies. He lied about murders that he subsequently
10 said he didn't commit, he lied to you about his drug
11 trafficking, and he lied to you about whether or not he was
12 aware of the vandalism that occurred at Mr. Guzman's house.

13 But what else did he lie to you about? Well, what
14 about the assault that he said took place under the bridge to
15 Winthrop? He lied about the assault that he said took place
16 under the bridge that connects East Boston to Winthrop. And,
17 ladies and gentlemen, it's not easy to catch someone in a lie,
18 particularly when the lie doesn't contain any details, and
19 you'll recall I was probing what else did he remember about
20 that other than what he testified to?

21 Well, he testified that Mr. Guzman allegedly was
22 involved in an assault under a bridge, but he couldn't tell you
23 much else about the incident. But in 2016, he told the
24 government that at the time of the incident, Mr. Guzman was
25 driving a Toyota SUV and that the assault took place under a

1 bridge that connected East Boston to Winthrop.

2 And now you know because I've submitted Exhibit 236
3 and 237, which are in evidence, which establish that Mr. Guzman
4 did not have a Toyota, has never registered a Toyota SUV during
5 the relevant time period, and, in fact, had a registered
6 Infinity.

7 Now, you might recall when confronted with that,
8 Muerto tried to minimize, tried to bob and weave. He tried to
9 say, well, I really don't know cars, but when he spoke to the
10 government initially, he didn't waffle. He didn't say maybe
11 I'm wrong, he said a Toyota SUV, and now you have the
12 documentary evidence to show that he was lying.

13 Now, you also know that from Exhibit 227 that there's
14 water under the bridge that connects East Boston to Winthrop.
15 Remember his testimony about the bridge? First, he said
16 bridges, then he described underneath the bridges, then he
17 described how he tackled the individual as he was approaching
18 underneath the bridge. Well, unless he had scuba diving
19 equipment on, he wasn't over this bridge, but then he tried to
20 change his position again. He said no, no, it was the bridge
21 to Revere.

22 But that's not what he told the government when he was
23 working under the terms of a proffer, when he was obligated to
24 tell the truth, and when he told them that it was under the
25 bridge from East Boston to Winthrop.

1 Well, this, ladies and gentlemen, is the only bridge
2 that connects East Boston to Winthrop, so we know that
3 Mr. Muerto is a liar and he lied about that alleged assault.

4 Now, he also lied about the alleged Maverick Station
5 assault. Remember he said that he was involved in that assault
6 with a bat and that he -- afterwards, he called Mr. Guzman and
7 he said Mr. Guzman told him to take a cab, Mr. Guzman told him
8 that he would pay for the cab. He testified that he took the
9 cab, he took the cab to a car wash in Chelsea, and he told you
10 this story with a straight face.

11 But when he initially told the government about this
12 alleged incident, he didn't mention any phone call to
13 Mr. Guzman on the night of the incident. He didn't mention
14 anything about a cab, he didn't mention anything about
15 Mr. Guzman saying he would pay for it. He didn't mention
16 anything about where Mr. Guzman picked him up, rather he told
17 the government he called Mr. Guzman the next day, and
18 Mr. Guzman picked him up at Checha's house. That's what he
19 told the government. He didn't say anything about -- he told
20 him about the attack, he described the attack, nothing, just
21 that he called him the next day to pick him up, and he picked
22 him up.

23 In short, ladies and gentlemen, his story about the
24 Maverick Station assault is not credible. It's not believable,
25 he made it up to curry favor with the government. What about

1 the Highland Park assault? His story about the Highland Street
2 Park assault is also not believable.

3 Recall his testimony was that after the assault that
4 he and Pelon and others participated in, he claimed that he
5 drove to Mr. Guzman's house with Domingo or Mingo. He
6 testified that Mr. Guzman gave him clothes, that Mr. Guzman
7 disposed of his other clothes, that Mr. Guzman was upset that
8 he brought Mingo to his house, but that's not what he told the
9 government when he was obligated to tell the truth under the
10 terms of his proffer.

12:35PM

11 What he told the government in 2016 was that he did
12 not tell Mr. Guzman about the Highland Park assault. Now, he
13 also told others while he was at clique meetings that he had
14 committed up to four murders. He said, well, one person I said
15 three murders, the other person I said four murders, and now
16 he's testified, oh, I didn't commit any of those murders.

17 Well, I don't know if he did or if he didn't. All I
18 know is that Mr. Hernandez Miguel is a liar. You should not
19 credit his testimony. You should not accept anything that he
20 has told you about Mr. Guzman, and that includes anything that
21 he has said about the speakers in the transcripts, if they go
22 back into the jury room with you, because it's Muerto, out of
23 the mouth of Muerto that the speakers in those transcripts were
24 identified. Well, once a liar, always a liar.

12:36PM

25 Now, unfortunately, the same is true of

1 Mauricio Sanchez or Tigre. We know that Mr. Sanchez now has
2 some mental issues. He admitted to having hallucinations,
3 anxiety, and taking mental health medications. I didn't enjoy
4 cross-examining him with those issues, but you had to hear the
5 full story. He also told you that he had a history of
6 substance abuse, a history of alcohol abuse, and you have to
7 think about that when you're evaluating his testimony about
8 what happened while he was in the throws of that abuse.

9 How good is his memory really when he's high on coke,
10 or how good is his memory when he's drunk and essentially
11 having an alcohol abuse problem? But what type of person lies
12 about shooting his own mother to curry favor with others? What
13 type of person claims that he's committed seven murders and
14 then testifies that he didn't commit any? Can you believe
15 anything he said? In a word, no. So where does that leave us?
16 Well, where we began, the government's case, in a nutshell, is
17 Mr. Guzman has a tattoo, he attended clique meetings, he was
18 present when the Animal was beat in, no evidence that he ever
19 agreed to commit a racketeering act, no evidence that he ever
12:38PM 20 agreed with anyone else that they would commit a racketeering
21 act, no credible evidence that Mr. Guzman ever participated in
22 a racketeering act, no credible evidence that he knew or
23 authorized anyone to commit a racketeering act before it
24 happened.

25 Now, you've also seen some pictures about the

1 vandalism to Mr. Guzman's car in July of 2015. Someone
2 vandalized Mr. Guzman's car. I submit to you that it was done
3 at a time when Mr. Guzman was refusing to participate in
4 racketeering acts, and I submit to you that someone wanted to
5 try to motivate him to change his mind by making him believe
6 that an 18th Street member came to his home and not only
7 vandalized his car but vandalized his home when his mother was
8 there, his wife was there, and his children were there.

9 Now, to summarize, what we've heard is that Mr. Guzman
12:39PM 10 refused protection details, he had no involvement with drugs,
11 he had no involvement with gun purchases. There were no
12 violent -- the government presented no violent acts by
13 Mr. Guzman during the investigation. The prior assault under
14 the bridge in East Boston to Winthrop is not believable. The
15 prior Maverick Station story is not believable. He had no
16 prior knowledge of the Highland Street assault, no prior
17 knowledge of the murder by Animal, no prior knowledge of the
18 murder by Vida Loca, and no prior knowledge of the attempted
19 murder by Animal, and that brings me to reasonable doubt.

12:40PM 20 The absence of any evidence that Mr. Guzman agreed to
21 commit racketeering acts is reasonable doubt. The absence of
22 any evidence that Mr. Guzman agreed with anyone else that they
23 would commit racketeering acts is reasonable doubt. All the
24 inconsistencies and lies in this case is reasonable doubt. The
25 false testimony by Muerto and Tigre is reasonable doubt.

1 The fact that the government's entire case rises and
2 falls on the testimony of witnesses that had something to gain
3 by helping the government is reasonable doubt. Muerto, Tigre
4 and Pelon. The fact that the government imbedded an informant
5 who was also off committing crimes right under the FBI's nose
6 is reasonable doubt.

7 As you deliberate in this matter and review all the
8 evidence and lack of evidence, think about the other important
9 decisions you have made in your life, the decision to get
12:41PM 10 married, buy a house, have children, just to name a few.

11 What level of confidence did you need in your
12 decision-making to convince you that your decision was correct,
13 that your decision was beyond a reasonable doubt?

14 The Court will instruct you that you may not convict
15 Mr. Guzman if you decide that it is probable, even strongly
16 probable that he is guilty. A good barometer for reasonable
17 doubt is to think about the other important serious decisions,
18 life-changing decisions that you have made in your life.

19 If the government has not convinced you beyond a
12:42PM 20 reasonable doubt that Mr. Guzman is guilty, then you must find
21 him not guilty because he is entitled to the presumption of
22 innocence up until you find that the government has proven its
23 case beyond a reasonable doubt, and if the government hasn't,
24 you must acquit. The law requires you to acquit.

25 Now you have the power and obligation to act. We told

1 you at the beginning of the trial that we're going to ask you
2 to do something that no one else has been able to do for
3 Mr. Guzman. We're going to ask you to protect him, to protect
4 him under our Constitution.

5 We are asking you not to leave him at the mercy of the
6 government any longer. We are asking you to give him his life
7 back. That, ladies and gentlemen, is the great calling of the
8 jury and the great function of an American jury. That's what
9 you're here to do today, to do justice. We urge you to live up
10 to your oath. We beg you.

12:43PM

11 The Reverend Martin Luther King once said, "The time
12 is always right to do what is right." We beg you to have to
13 the courage to do what is right, to have the courage to do
14 justice, to have the find to courage Mr. Guzman, an innocent
15 man, not guilty because the only verdict that's just in this
16 case is a not guilty verdict.

17 Thank you for your time.

18 THE COURT: All right. Thank you, Mr. Lopez. All
19 right. What we're going to do now is take our break for lunch.
20 Let's make this as close to 45 minutes as we can. Your lunch
21 should be waiting up there unless you ate it at the last break,
22 all the more reason to make this short, but certainly the
23 lawyers and I will want to eat something, so let's try to
24 convene as close to 1:30 as we can make it.

12:43PM

25 THE CLERK: All rise.

(Whereupon, the hearing was adjourned at 12:43 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing transcript was recorded by me stenographically at the time and place aforesaid in Criminal Action No. 15-10338-FDS, UNITED STATES vs. HERZZON SANDOVAL, et al., and thereafter by me reduced to typewriting and is a true and accurate record of the proceedings.

Dated this 22nd day of June, 2018.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER